

# APPENDIX

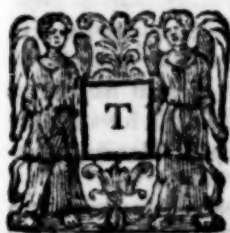
## TO THE

# LONDON MAGAZINE.

### MDCCXXXV.

Conclusion of the PROCEEDINGS and DEBATES in the *last Session* of PARLIAMENT; continued from *Page 657.*

*Remainder of the DEBATE on the Motion relating to the Seville Treaty.*



O the Argument against the said Motion, it was replied as follows, *viz.*

My Lords, Whatever may be my own private Opinion, I have so great a Deference for the Opinion of this House, that

if there were no Difference between this and the former Motion, I should not have stood up to have said any Thing in its Favour; but I hope when your Lordships consider it you will see, that there is a very great Difference between the Papers now called for, and the Papers called for by the former Motion; for tho' the Transactions to which the former Motion related happened several Years ago, yet it cannot be said that the Affair is quite at an End, because the Dispute about the Election of a King of *Poland* is still subsisting; and for that Reason many of your Lordships might think it improper to have any Papers published, which any way related to that Dispute; but in the Case now before us there is no Foundation for such an Argument; the Affair relating to the Execution of the Treaty of *Seville* is now quite at an End, the Treaty has been fully executed in all its Parts, except so far as relates particularly to this Nation, I mean, my Lords, with respect to the Depredations com-

mitted upon our Merchants by the *Spaniards*; and as Satisfaction was due to us by the Law of Nations, I hope we have made no Promises, nor used any Arguments that can possibly disoblige any Power in *Europe*, not particularly concerned in that Affair: Indeed, if the Doctrine of Consequences takes Place, if we must never call for Papers relating to any Transaction as long as its Consequences are upon the Anvil, I doubt much if this House can ever call for Papers relating to any Transaction that has happened for at least a Century past; for every Transaction must be the Consequence of some former, perhaps a great many former Transactions, so that we could never call for the Papers relating to any Transaction as long as the Persons concerned in it were alive, which would indeed be an excellent and a safe Doctrine for Ministers; but for that very Reason I hope it will never be received within these Walls.

I shall readily admit, my Lords, that the Consequences of the Treaty of *Seville* are now upon the Anvil: I shall readily admit that the present War is a most natural Consequence of the Treaty of *Seville*, and of the Negotiations that were afterwards entered into for executing that Treaty by Force; and I am so far from thinking that those Negotiations, or the Papers relating to them, can have no Relation to the Causes or Motives of the present War, that I am convinced the War is chiefly owing to that Treaty, and the Measures that were concerted for its Execution. By that Treaty the ancient Union and

intimate Correspondence between *France* and *Spain* were restored; and by the Introduction of *Spanish* Troops into *Italy*, we not only opened a Way for the *Spaniards*, but by that very Step we lost the King of *Sardinia*, by which we opened a Way likewise for the *French* into the same Country, and thereby united those three Powers in that close Confederacy which occasions the present Disturbance in *Europe*.

But, my Lords, tho' the present War be a most natural Consequence of the Treaty of *Seville*, and the future Negotiations for the Execution of that Treaty, I am so far from thinking this a good Reason for our not calling for any Papers relating to the Execution of that Treaty, that I think it is a most convincing Argument for our enquiring strictly into all those Transactions; and there is no Danger to be apprehended from publishing any Papers relating to them: There can be nothing in any of those Papers that can possibly disoblige either of the three Powers now united against the Emperor, more than we have already done by the Treaty of *Vienna*; and if there be any Thing in either of those Papers which might at that Time have been disobliging to the Emperor, we have since sufficiently atoned for it by the unlimited Guaranty of the Pragmatick Sanction, which the Honour of this Nation now stands charg'd with by the Treaty of *Vienna*; so that it is not possible to conceive how there can be any Thing in the Papers now called for, that may tend towards defeating the Plan which has been concerted for restoring the Peace of *Europe*, and which the noble Duke says will appear to be a wise and a good Plan.

As I know nothing, my Lords, about this Plan, I shall not pretend to say what it will appear to be; but if it should appear to be a wise and a good Plan, I am sorry to find that the *Dutch* only are to have the Honour of it; for as we have been at all the Expence both in concerting it, and in endeavouring by our Preparations to make it effectual, it was, I think, but reasonable that we should have had a Share of the Honour. However, let the Plan be what it will, it can receive no Prejudice from any of the Papers now moved for: It is impossible that either of the Parties engaged in War can from thence find any Colour of Reason for rejecting the Plan; and if from frivolous Pretences they reject it, their real Designs will appear as evident as if they had rejected it without giving any such Reason: But, my Lords, whatever may become of the Plan, the present Posture of Affairs is of so great Importance, that we cannot, in Honour, neglect giving his Majesty our Advice; and it is impossible for this House to give him any Advice, without seeing the Papers now moved for. Indeed, if the Plan should be rejected, we must then see a great

many other Papers, before we can pretend to be so thoroughly acquainted with the Circumstances of Affairs, as to be able to give any reasonable Advice, with respect to those Measures which his Majesty ought in that Case to pursue.

The Question being then put, it was, upon a Division, carried in the Negative, by 73 to 29.

This Motion was made by the L—d B—st, and supported by the E—l of C—ld and L—d C—r. The Speakers against it were the L—d H—y and the D—ke of N—le.

As soon as this Division was over, the L—d C—r made the following Motion, viz. That an humble Address be presented to his Majesty, that he would be pleased to give Directions to the proper Officer or Officers, to lay before this House the several Allotments of Quarters which had been made for his Majesty's Land Forces in *Great Britain*, since the 25th of *March* last. Which Motion was agreed to without Debate or Division.

Proceedings in the H— of C—nt.

On *March* 7. the H—se of C—nt resolved itself into a Committee of the whole House, to consider further of Ways and Means for raising the Supply granted to his Majesty, and came to the following Resolutions, which were next Day reported to the House, viz.

That towards raising the Supply granted to his Majesty, there be issued and applied the Sum of one Million, out of such Monies as have arisen, or shall or may arise for the Surplusses, Excesses, or Overplus Monies, commonly called the Sinking Fund.

That towards raising the Supply granted to his Majesty, the several Duties on Salt, and also on red and white Herrings, delivered out for home Consumption, which, by an Act of the 7th Year of his present Majesty's Reign, were continued and granted to his Majesty, his Heirs and Successors, until *March* 25, 1742, be further continu'd from *March* 24, 1741, to *March* 25, 1746.

And Bills were brought in soon after, pursuant to these Resolutions.

HADDINGTON Petition.

On the 12th a Petition of *George Herriot*, Provost of the Royal Burgh of *Haddington* in *Scotland*, *Robert Forrest*, Brewer there, *John Hay*, Sadler there, *George Hunter*, Wheelwright there, and *George Walker*, Skinner there, was presented to the House, alledging, That upon Application made the 24th of *Oct.* then last, by *James Erskine*, *John Cludde*, *Andrew Wilson*, and others, assuming to themselves the Name of Magistrates in the said Burgh, and complaining that the Petition—



ers had disturbed them in the pretended Exercise of their Offices, the Hon. *Andrew Fletcher*, of *Miltoun*, one of the Judges of the Court of Justiciary, and also of the Court of Session in *Scotland*, tho' there was evidently no Foundation for such Complaint, without any Jurisdiction to judge of the Merits of the Election of Magistrates of the said Burgh, without any Evidence laid before him, without any Notice given to the Petitioners, or any of the other Persons concerned, and so without hearing them or calling them before him, gave forth a summary Warrant, directed to all Officers whom it concerned, civil or military, to search for, seize and apprehend the Persons of the Petitioners and many others, to the Number of 40 Burgeses and Inhabitants, whereof 17 were acting Magistrates or Counsellors of the said Burgh, where-ever they should be found in *Scotland*, and to imprison them within the nearest sure Prison; that this Warrant was lodged in the Hands of *Humphry Colquhoun*, one of the Macers or Messengers of the Court of Justiciary, without the Privy of any other of the Judges of that Court; and, as the Petitioners have Reason to believe, the said *Andrew Fletcher* order'd the said Macer to take Directions from *Patrick Lindsay*, Provost of *Edinburgh*, as to the Manner of executing that Warrant; and such Directions were accordingly given, as the Petitioners have Reason to believe, in Writing; that this Warrant was accompanied by an Order from Brigadier General *Moyle*, then acting as Commander in chief of the Forces in *Scotland*, to the commanding Officer of the Dragoons then quartered in *Haddington*, to assist with his Dragoons in the Execution of the Warrant; that upon the 25th of the said Month of *October*, the Petitioners were seized by the said *Humphry Colquhoun*, and tho' the next sure Prison was that of *Haddington* itself, or that of *North Berwick*, and tho' the Petitioners desired either to be committed there, or to be carried to *Edinburgh*, the Seat of the Courts of Justice, where they might apply for Redress, yet he told them that his Orders were to carry them to the Prison of *Dunbar*, and no other, a Place 20 Miles distant from *Edinburgh*, and 8 Miles from *Haddington*, and 3 Miles further from *Edinburgh* than *North Berwick*; and tho' the pretended Crime was bailable, and *Alexander Hepburn*, the Sheriff Substitute, to whom the Petitioners applied, was by Law impowered, and willing to admit them to Bail, the said *Humphry Colquhoun* told, that he could not dismiss them upon Bail, his express Orders being to take no Bail, but to commit his Prisoners to the Prison of *Dunbar*; where they were accordingly imprisoned from the said 25th of *October* to the 27th of the said Month, till by a Warrant from the Hon. *David Erskine*, of *Dun*, another of

the Judges of the said Courts of Justiciary and Session, the Petitioners were set at Liberty, and Execution of the Warrant was stay'd against the rest, upon Bail given by the Petitioners and them; and that since that Time no criminal Prosecution has been moved for, upon any of these pretended Crimes charged against the Petitioners or the rest; that these Proceedings, as the Petitioners apprehend, and are advised, were utterly illegal and oppressive on the Part of the said *Andrew Fletcher*, of *Miltoun*, tending to destroy the personal Liberties of every Subject, the Freedom of the Royal Burghs, and of Consequence the Freedom of Elections of Members to serve in Parliament for such Burghs; and as the Petitioners can hope for no Redress but from the Justice of Parliament, therefore praying the House to take the Premises into Consideration, and to grant such Redress therein as may effectually prevent such Oppressions in Time coming, and as otherwise to the House shall seem meet.

After this Petition was read, a Motion was made for referring it to a Committee of the whole House, upon which there was a long Debate; but the Question being at last put, it was, upon a Division, carried in the Negative, by 197 to 155.

This Petition seems to have given Occasion to the following Motion, which was made soon after, *viz.*

That Part of an Act of the Parliament of *Scotland* in 1701, intituled, *An Act for preventing wrongous Imprisonment, and against undue Delays in Trials*, might be read; which being accordingly read, it was moved, that Leave might be given to bring in a Bill for explaining and amending the said Act; and the same being agreed to, Mr. *Dundas*, the Lord *Polwarth* and Mr. *Sandys* were ordered to bring it in.

*Several Sums granted.*

On *March* 17, the House resolved itself again into a Committee of the whole House, to consider further of the Supply granted to his Majesty, when they resolved to grant the following Sums, *viz.*

The Sum of 10,393*l.* 5*s.* 11*d.* to compleat the Sum of 81,568*l.* 5*s.* 11*d.* for Services incurred by augmenting his Majesty's Forces, and in concerting such other Measures as the Exigency of Affairs had required. The Sum of 49,834*l.* 13*s.* 4*d.* upon Account, for reduced Officers of his Majesty's Land Forces, and Marines, for 1735. The Sum of 378*ol.* for paying off Pensions to the Widows of such reduced Officers of his Majesty's Land Forces, and Marines, as died upon the Establishment of Half-pay in *Great-Britain* (and who were married to them before *Dec.* 25. 1716) for the Year 1735. The Sum of 79,760*ol.* 3*s.* 9*d.* for the Charge of the Office of Ordnance for Land Service for 1735. The Sum of 24,693*l.*

1s. 6d. for defraying the extraordinary Expence of the Office of Ordnance for Land Service, not provided for by Parliament. The Sum of 36,405l. 15s. 4d. Farthing, to make good the Deficiency of the Grants for the Service of the Year 1734. The Sum of 37,557l. 13s. 4d. for making good the Deficiency of the general Fund. The Sum of 198,914l. 9s. 7d. for the Ordinary of the Navy (including Half-pay for Sea Officers) for 1735. The Sum of 10,000l. towards the Support of the Royal Hospital at *Greenwich*. The Sum of 10,000l. towards the Maintenance of the *British* Forts and Settlements belonging to the Royal *African* Company of *England*, on the Coasts of *Africa*. The Sum of 26,000l. towards settling and securing the Colony of *Georgia* in *America*. The Sum of 4000l. towards the Repair of the Collegiate Church of *St. Peter, Westminster*: And the Sum of 3500l. for the Repair of the Tower and Roof of the Parish Church of *St. Margaret Westminster*. By adding these Sums to the Sums before granted it will appear that the Supply granted for this Year amounts to 3,150,452l. 4s. 7d. Halfpenny.

On the 19th it was ordered, that Leave should be given to bring in a Bill for the better securing the Freedom of Parliaments, by limiting the Number of Officers in the House of Commons; and Mr. *Sandys*, Mr. *Wortley*, Mr. *Hew*, Sir *John Hind Cotton*, Mr. *Watkin Williams Wynne*, and Sir *William Lowther*, were ordered to prepare and bring in the same; which was accordingly presented to the House on the 21st, by Mr. *Sandys*.

The same Day the House having resolved itself into a Committee of the whole House, on Ways and Means, resolved, that towards raising the Supply granted to his Majesty, the Sum of 2s. in the Pound and no more, should be raised in the Year 1735, upon Lands, &c. and that a proportionable Cess (according to the 9th Article of the Treaty of Union) should be laid upon that Part of *Great Britain* called *Scotland*.

DEBATE in the H. of Lords on the Motion against augmenting the Army.

On *March* 13. the Mutiny Bill was read a second Time in the House of Lords, and ordered to be committed: But as soon as the Motion for committing was agreed to, a Motion was made, that an Instruction should be given to the Committee on that Bill, to receive a Clause for providing, that the Number of Land Forces to be mention'd in the Preamble, and subjected to the Penalties of that Bill, should not exceed 17,704 Men.

Upon this Motion there was a long Debate, in which the Arguments for the Motion were to this Effect. *viz.*

My Lords, Altho' I have agreed to the committing of this Bill without any Objec-

tion, yet I cannot but take Notice of the Number of Forces mentioned in the Preamble. The Number of Forces kept up last Year, was much greater than I thought necessary for the Defence of our Country, and much greater than I thought consistent with the Safety of our Constitution; but by the Bill now before us I find, even that Number is now to be greatly increased; and why a greater Number is necessary or safe I cannot comprehend. I have always thought myself obliged, as a Member of this House, to take Notice of every Thing that might occasion any additional Burden to be laid upon the Subject, or that might, in my Opinion, be of dangerous Consequence to the happy Constitution of this Kingdom; and I have always thought it my Duty not to give Consent to either, till I heard very sufficient Reasons for convincing me that it was necessary. This, my Lords, is what makes me now stand up; for I have always been of Opinion, and I think it has generally been admitted, that the keeping up of a great Number of regular Troops within this Island, in Time of Peace, is of the most dangerous Consequence to our Liberties, and the increasing that Number upon any Occasion, must oblige us to lay new Burdens upon the People.

As the Circumstances of *Europe* are now much the same they were last Year, if no greater Number had been proposed for the ensuing Year, I have so great a Respect for the Opinion this House was of the last Session of Parliament, that tho' I am still of a different Opinion, I should not have given your Lordships any Trouble upon the present Occasion; but since a great Addition is now to be made, to that which last Year I thought too great a Number, I expected that some of the noble Lords, who are in the Secret of our Affairs, would have stood up and shewn us the Necessity for this Augmentation: This I not only had Reason to expect, but I am in Honour obliged to insist upon it, before I give my Consent for keeping up the Number now proposed; and every Lord of this House, who is in the same Circumstances with me, has Reason to expect the same, and lies under the same Obligation to insist upon it. There may be, for what I know, a very urgent Necessity for this Augmentation, but I desire to have that Necessity explained to us; for if this House should ever come into the Method of increasing our Fleets and our Armies, and loading our People with Debts and Taxes, for no other Reason but because the Ministers tell us it is necessary, the Parliament of *Great Britain* will soon come to be of the same Nature with the Parliament or States of the Province of *Britany*, or of any of the other Provinces of *France*; we may perhaps continue to meet in this House, but we shall meet here for no other End but to approve of what our Ministers



sters may be pleased to inform us of, and to give a parliamentary Sanction to whatever they may be pleased to propose.

The chief Reason therefore, my Lords, for my standing up, is to demand that some noble Lord, who is better acquainted than I am with the present Circumstances of the Nation, especially with respect to our foreign Affairs, would stand up in his Place, and explain to us the Necessity for our making the Augmentation proposed; for unless that Necessity be fully explained to us, I hope your Lordships will agree to the Motion I now make, which is, That there may be an Instruction to the Committee upon this Bill, to receive a Clause, &c. (as abovementioned.)

The Answer was in Substance as follows, viz.

I shall readily admit, my Lords, that the keeping up of a numerous Standing Army within this Island, in Time of Peace, is of the most dangerous Consequence, and absolutely inconsistent with our Constitution; I shall likewise admit, that no Augmentation can be made to our Army without laying some additional Burden upon the People; and therefore I must admit, that we ought never to agree to either without some very apparent Necessity for so doing; but the Affairs of *Europe* are at present in such a dangerous State, and that State is so well and so publickly known, that the Necessity for our making an Augmentation of our Army is, in my Opinion of itself apparent, and therefore I thought it was quite unnecessary for any Lord in this House to explain that Necessity. The present cannot be properly said to be a Time of Peace: We are at present in a State of Doubt and Suspence, which can neither be called a State of Peace or of War; for tho' we are not actually engaged in the War now carrying on in *Europe*, no Man can foresee how soon we may be obliged to engage; and therefore it is highly necessary for us to begin early to provide for the worst, in order that we may be able to engage with such Vigour as may contribute both to the Safety and the Honour of the Nation, in case any future Event should render it absolutely necessary for us to take a Share in the War.

The Number of Troops mentioned in the Preamble of this Bill is, 'tis true, greater than that which was mentioned in the same Bill last Session of Parliament, yet, my Lords, the Augmentation is not so great as it may at first appear to be: The Number of Troops proposed for this ensuing Year, does not exceed that Number which was thought necessary last Year; for your Lordships must remember, that towards the Close of last Session, there was a Power granted to his Majesty to augment his Forces both by Sea and Land, if the Exigency of Affairs should so require; and in Pursuance of this Power,

there was last Year an Augmentation made to our Land Forces, which Augmentation his Majesty thought absolutely necessary, for enforcing those Measures he was then taking, in Concert with his Allies, to restore the Tranquillity of *Europe*. His Majesty's Mediation, in Conjunction with his Allies the *Dutch*, had been accepted by all the Parties engaged in War; and in such Circumstances, it was certainly very necessary for his Majesty to put himself into such a Condition as might add Weight to what he was to propose, as Mediator of the Differences subsisting in *Europe*. A Plan of Peace has accordingly been offered to the Parties engaged in War; if the Terms of the Plan be accepted, Peace will be restored to *Europe*, the Balance of Power preserved, and this Nation freed from the Danger it is at present exposed to, of being obliged to engage in a bloody and expensive War: It is therefore very much the Interest of this Nation in particular, as well as of *Europe* in general, to have that Plan made effectual; and it must be granted, that the most certain Method for making it effectual, is for his Majesty to shew to all the Parties concerned, that he is preparing to join against those who shall refuse to accept of those reasonable Terms of Peace which he has been pleased to propose. This was the Reason for making an Augmentation last Year, this is the Reason for making still a further Augmentation for the Year to come, and this, my Lords, is so apparent, that I did not expect it would have wanted any Explanation.

But, my Lords, if his Majesty's Endeavours should fail of the desired Success, the Augmentation we have made will then be of great Use; for if that reasonable Plan his Majesty has offered should be rejected, it will be a Proof, that some of the Parties engaged in War have Designs which are inconsistent with the Liberties of *Europe*; this must, of course, necessarily oblige us to join the other Side, and by the Preparations we have made we shall be able to put a Stop to the Designs of the Ambitious, before they have had an Opportunity to push them too far; in which we shall certainly have the Assistance of our Friends the *Dutch*, who, as they are joined with his Majesty in the Mediation, will, without Doubt, join with him in such other Measures as may be necessary for preserving the Balance of Power; and this they will do the more cordially and freely, when they see that his Majesty is prepared for the immediate Execution of any Measure that may be proposed. In this respect, they were in a Situation very different from that in which we were at the Beginning of the War, because they had made no Reduction of their Land Forces ever since the Treaty of *Vienna* between the Emperor and *Spain*, and therefore it was not necessary for them to make any

any Augmentation; all they had to do was, to delay making that Reduction which they had actually resolved on before the present War broke out; whereas we had long before reduced the Augmentation we made of our Land Forces on occasion of that Treaty, and were, for that Reason, obliged to encrease them last Year, in order to put ourselves upon an equal Footing with the *Dutch*, and to convince them, that we were resolv'd to be ready to join with them in any Measure that should appear necessary for preventing the ambitious Views of either of the Parties now engaged in War.

Upon this Occasion, my Lords, we ought to consider, that immediately after the Treaty of *Utrecht* the *Dutch* reduced their Land Army to 32,000 Men, which they suppose to be a Number sufficient for the Defence of their Country in Time of Peace, and accordingly it appeared to be so; for they never made any Addition till they heard of the Treaty concluded between the Emperor and Spain at *Vienna*, and the Counter-alliance concluded between England and France at *Hannover*; upon which Occasion, as the Affairs of Europe seemed to tend towards an open Rupture, they augmented their Army with 20,000 Men; and at the same Time, and for the same Reason, we increased our Land Forces to the Number now proposed by this Bill; but upon the Conclusion of the Treaty of *Seville*, we reduced our Forces again to their old Standard, whereas the *Dutch* never reduced a Man of the 20,000 additional Troops they had raised, tho' it is certain they were resolved to reduce every Man of them, as soon as they saw that the Affairs of Europe would admit of such a Reduction, and had actually come to a formal Resolution to reduce 10,000 of them, just before the late King of Poland's Death; but upon that Prince's Death, they very wisely suspended that Resolution; so that certainly they have now 20,000 Land Forces on Foot, more than they would at this Time have had, if no War had broke out; therefore it may be properly said, they have made an Augmentation of 20,000 Men on account of the present War; and to do them Justice as our Allies, and as being united in the same Interest with us, we can do no less than increase our Army to the Number now proposed, as being the least Number we can have, in Proportion to the Army our Allies the *Dutch* have at present on Foot.

The Number of regular Forces kept up within this Island in former Times is, I find, my Lords, an Argument constantly made use of when this Bill comes before us; but it is always, in my Opinion, an Argument rather for than against the Number of Forces proposed by the Bill; for considering the Difference between regular Forces and Militia, which the late Troubles in *Poland* have made sufficiently manifest, it must be granted, that the Number of regular Forces kept up in this

Nation, or in any Nation, ought always to bear some Sort of Proportion to the Number of regular Forces kept up by neighbouring States, especially by those from whom the greatest Danger is to be apprehended; and as all the Nations of Europe have of late Years very much increased their Number of regular Forces formerly kept up, we must necessarily do the same; but in particular, we ought to consider our neighbouring Kingdom of France, the Nation from which we have the most to fear, and if we compare the Number of regular Forces now kept up by them, even in Time of Peace, with the Number they formerly kept up, I believe we'll find, that the Increase we have made in our Number of regular Forces bears no Proportion with the Increase they have lately made; so that this Argument, which is generally made use of against the Bill, is really, when rightly considered, one of the strongest Arguments that can be made use of in Favour of the greatest Number of Forces that was ever proposed to be kept up within this Island in Time of Peace; and considering the doubtful State we are in at present, considering the present dangerous Situation of the Affairs of Europe, I am surprized to see any Opposition made to the small Augmentation now proposed.

The Reply was in Substance thus, viz.

My Lords, As every Day seems to furnish us with new Maxims in Politicks, which to me appear very extraordinary, so this Day has furnished us with a Maxim, that is not only extraordinary but inconsistent with our Constitution: We have been told, that the Number of regular Forces kept up in this Nation is always to bear some Proportion to the Number of regular Forces kept up by our Neighbours, especially by our Neighbours of France, from whom we are said to have most to fear. My Lords, if we were so unlucky as to be situated on the Continent, or to have any Neighbours that could come at us by Land, there might be some Truth in the Maxim now discovered to us; but as we have the Happiness to be surrounded by the Sea, and to have a Fleet superior to any that can probably be sent against us, we have no Occasion to give ourselves any Trouble, or to put ourselves to any Expence, on Account of the Number of regular Forces kept up by any of our Neighbours: Our Neighbours may keep up as many Thousands, or as many hundred Thousands as they please, but they cannot put hundred Thousands on board Transports, and without putting them on board Transports, they can do no Harm to this Nation: Nay, they cannot put any great Number of Thousands on board Transport Ships without our hearing of the Embarkation; and if we have the least Suspicion of their being designed against



gainst us, we can send our Fleet and lock them up, or perhaps burn their Ships in their Harbours; therefore we can never have Occasion to keep up in this Island any greater Number of regular Forces than are necessary for securing our Coasts against sudden and unexpected Invasions, which can never consist of above 4 or 5000 Men, and to guard us against such, I am sure a much smaller Number of regular Forces would be sufficient than has been kept up for many Years past in this Island.

We have likewise been told, my Lords, of the great Difference between regular Forces and Militia, which, 'tis said, has been manifested by the late Troubles in *Poland*: But, in this Case, we ought to distinguish between Veteran Troops, and those that can only be called regular Troops: We ought also to distinguish between a regular well-disciplined Militia, and a meer Rabble or Mob. By Veteran Troops, I mean those who have been inured to Action, and are acquainted with Danger, and such I believe will always be found better than the best disciplined Militia, or even the best regular Troops that never look'd an Enemy in the Face, unless it was the Smugglers and the Thieves of their own Country: But that there is any very great Difference between these last mentioned Troops, and a regular well-disciplined Militia, is what I cannot admit of; nor have the late Troubles in *Poland* afforded me any Reason to do so; for every one knows, that their Militia were neither regular nor disciplined; nay, I doubt much if they were sufficiently provided with Ammunition or Arms: But the Situation of this Country is very far different from that of *Poland*; for tho' our Militia have been very much neglected of late Years, yet before we could be invaded by any powerful Armado, we would have Time to discipline our Militia, and to form them into regular Regiments: It is very well known, that the *Spanish* Armado was above two Years in preparing, and I believe there is not now a Nation in *Europe*, besides ourselves, that could fit out such another in a shorter Time. In two Years, in the Half, in the fourth Part of that Time, there is not a Plowman in *Britain* but might be made as good a Soldier as ever danced thro' his Exercises at a Review; and if he should dance thro' his Exercises for 20 Years longer, without seeing Action, he cannot be called a Veteran, nor can it be supposed he will behave as such in the first Action he happens to be in.

These Considerations, my Lords, have always convinced me, that 7 or 8000 Men are sufficient to guard this Island against any foreign Invasions, and I am sure they will always be sufficient for the Support of our Government, as long as the Affections of the People are carefully preserved; a greater

Number can never, in my Opinion, be necessary, unless it be to support a wicked and oppressive Administration, against the general Resentment of the People; and this House will never, I hope, give Countenance to any such Design. From hence, my Lords, I must conclude, that we are for this next Year to keep up 17 or 18,000 Men purely on Account of the present War, and why we should as yet give ourselves so much Concern, or put ourselves to such an Expence about it, is what I cannot comprehend. We are, it is said, in a State of Doubt and Suspence, but were not we in the same State at the Beginning of last Session of Parliament? Were not the Consequences of the War as much to be dreaded at the Beginning of that Session as at the End, or as they can be at present? Nay, in my Opinion, they were not more to be dreaded at the Beginning of that Session than at any Time since; for ever since that Time the Parties engaged have appeared to be pretty equally matched, and while they continue so, I am sure the Balance of Power can never be supposed to be in Danger; so that if his Majesty augmented his Land Forces, in Pursuance of the Power granted at the End of last Session of Parliament, it is so far from being a Reason for agreeing to the Augmentation now proposed, that unless I hear some better Reason than I have yet heard for it, I must conclude, it was an unnecessary Augmentation, it was putting the Nation to a needless Expence; and therefore we ought to be so far from approving it, by making a new Augmentation, that we ought to address his Majesty, to know who it was advised him to make the last.

With respect to the Plan of Peace said to have been offer'd to the Parties now engaged in War, I am, my Lords, entirely in the Dark, nor can any Lord, as a Member of this House, draw any Argument from it, because nothing relating to it, nothing relating to any of our foreign Affairs, has been laid before this House. Whatever that Plan may be, I wish it may meet with the desir'd Success; but I am sorry to say, I have too good Reason to doubt of its meeting with any Success; for, from the View I have of foreign Affairs, even from that View which I take from publick News-Papers, I am of Opinion, the War now kindled in *Europe* cannot be so easily made an End of as some People imagine: Before that Flame can be extinguished, I am afraid much Blood must be spilt, great Princes must suffer, even Queens must weep; the Conduct of Ministers must be enquired into, and some must meet with that Punishment they deserve, before that Flame can be extinguished which has been raised by their Mismanagement.

But supposing, my Lords, that we had been made fully acquainted with this Plan, supposing

# 700 PROCEEDINGS, &c. in the last Session of PARLIAMENT.

ing that we knew it to be a reasonable and a good Plan, do we think that his Majesty's Measures, or any Propositions he may be pleased to make to foreign Powers, are to be enforced by an Addition of 7 or 8000 Men to his Land Forces? No, my Lords, his Majesty's Measures are, upon all Occasions, to draw their Weight from the Affections of his People, and from the sincere Advices of his Parliament; after we have been fully informed of our Circumstances with respect to foreign Affairs; for in case it should at last appear absolutely necessary for us to enter into the War, for the Sake of preserving the Balance of Power in *Europe*, all the Men in the Nation, able to bear Arms, would be at his Majesty's Service, and every Purse would be open to him; but till that Conjunction happens, the Strength and the Money of the Nation ought to be husbanded as much as possible; the Nation's Money ought not to be thrown away upon useless Augmentations, either by Sea or Land, which can no way contribute to intimidate our Enemies, and may amuse our Friends with vain Hopes of Assistance, when perhaps there is no such Thing designed.

The *Dutch*, 'tis true, my Lords, did reduce their Land Forces to about 32,000 Men soon after the Peace of *Utrecht*, but it is well known that the Reduction they then made was too great, and was loudly complained of even by some of their own Provinces: At that Time indeed there was almost a Certainty, that the Tranquillity of *Europe* would continue for some Years; every Nation in *Europe* was then groaning under the Burdens the former War had brought upon them, so that it was very improbable any one of them would soon think of disturbing the Peace of any neighbouring State; and the *Dutch*, who had their Share of the Burden of the War, thought they might take Advantage of that Time of absolute Security to ease their People, and to recover a little from that Burden of publick Debts they were then labouring under; yet even at that Time, notwithstanding the State of absolute Security which *Europe* was then in, the Provinces of *Guelderland* and *Overyssel*, which lie most exposed, remonstrated strongly against the Reduction then made, and never ceased their Remonstrances till the Treaty of *Hanover* happen'd, which afforded them an Opportunity of pressing an Augmentation with Success; for as the Situation of that Country is very different from the Situation of this, it is at all Times necessary for them to keep up a numerous Army. They have the Misfortune to be situated upon the Continent, and may consequently be suddenly invaded by great Armies; they have an extensive Frontier to defend, upon which they have above 70 fortified Towns, and in every one of these they must keep a Garrison, in many of them they must keep numerous Garrisons; so that

32,000 Men is really the least Number they can keep up, unless it be at some very extraordinary Conjunction, such as that which happened after the Treaty of *Utrecht*.

Altho', my Lords, there can be no just Parallel drawn between the Number of regular Forces necessary to be kept up in *Holland*, and here; yet let us consider what we did at that Time the *Dutch* made this large Reduction: Did not we at the same Time reduce our Army to 7 or 8000 Men, and if at that Time we had followed the Example of the *Dutch*, we had reduced it to half that Number; if any Parallel then could be drawn between the *Dutch* and us, the additional 10,000 we now keep up, and which has been kept up for many Years, ought to be set against the 20,000 additional Forces raised by the *Dutch* upon the Conclusion of the Treaty of *Hanover*, and every Man must grant, that it is more than our just Proportion. But besides this 10,000 which last Year we agreed to keep up, for no other Reason but on account of the War then broke out in *Europe*, have not we made a most extraordinary Addition to our Naval Force? Have we not now added no less than 22,000 Men to the Number of Seamen we kept up the Year before the War broke out? So that if we had actually reduced the 10,000 Land Forces kept up last Year solely on account of the War, neither the *Dutch* nor any other of our Allies could have said that we were behind-hand with them, in providing for the Preservation of the Balance of Power in *Europe*; but as the Case now stands, we have taken such an Alarm, and have put ourselves to such an Expence, that all the Powers of *Europe* seem to think we have done enough for them, as well as ourselves; and therefore neither the *Dutch*, nor any other Power, have given themselves the least Concern, or put themselves to the least Expence about the Preservation of that in which they are as deeply and more immediately concerned than we are.

If the Balance of Power, my Lords, were really in Danger of being overturned, we ought to take other sort of Measures than have as yet been taken. Our Treaty with *Denmark* can make no new Addition to the Security of that Balance, because the King of *Denmark*, by as solemn a Treaty as can be made, was before obliged to assist the Emperor with all his Force; and if the Emperor could not depend upon that Treaty, we can as little depend upon the Treaty we have made, or any Treaty we can make: But upon the present Emergency, our Views should have been principally directed to another Quarter; there is another Power whose Friendship and Alliance will always add great Weight to any of our Negotiations upon the Continent, and I am sorry to find there is not so good an Understanding between that Power and us as ought to



to be wished upon all Occasions, but particularly upon the present Emergency. As we have been refused all Insight into the Affairs of *Europe*, or into any of our late Negotiations, it is impossible for me to judge, whether the Balance of Power be in Danger or not; but by the Inaction of the *Dutch*, and by the Indifference shewn by several other Powers, with respect to the present War, I must conclude, that the Balance of Power is not as yet like to be in any Danger; if it is not, and if we have no other Concern in the War, I must then certainly conclude, that the great Expence we have been at, as well as the additional Expence now proposed, are quite useless, and can serve no Purpose but that of overloading the People with Taxes, and alienating the Minds of his Majesty's Subjects, which, instead of adding Weight to his Majesty's Negotiations, will frustrate all his Measures for restoring the Tranquillity of *Europe*, and will render the Councils of this Nation contemptible in the Eyes of all our Neighbours.

To pretend, my Lords, that we must always augment our Land Forces when *France* augments theirs, is one of the most dangerous Doctrines I ever heard delivered in this House: It may as well be said, that because the *French* have given up their Liberties, and submitted their Necks to the Yoke of arbitrary Power, we ought to do the same. What have we to do, for God's Sake, with the Armies of *France*? They may march great Armies into *Holland*, *Germany*, *Italy*, or *Spain*; but can they march an Army into *Great Britain*, or into any Part of our Dominions? We know they cannot; and we likewise know they cannot transport any great Number of Forces by Sea, nor can they transport any Number but by Stealth, as long as our Fleet is superior to theirs: And while we are united among ourselves, as long as his Majesty, or any of his illustrious Family shall retain the Hearts and Affections of the People, we have nothing to fear from any Number that *France* could, by Stealth, throw in upon us, tho' we had not a Regiment of what are called regular Forces in the Kingdom.

Let us consider, my Lords, what it was that chiefly contributed to destroy the Liberties of *France*: It was, my Lords, their Fears of Invasions from us: We had then large Possessions in that Country, from whence it was easy for us to invade them at any Time; and the continual Apprehensions they were under of Invasions from us, afforded their Kings and Ministers a Pretence for prevailing with the People to alter the Form of their military Force: They altered the antient Establishment of their Militia, and put the Power over them entirely into the Hands of the Crown: This gave the first Blow to the Liberties of the People; for soon after their Kings began to keep up regular Armies, entirely dependent upon

the Crown; and as *France* was the first Country of *Europe* where any such Army was kept up, so the *French* were the first People in *Europe* that lost their Liberties: If we should fall into the same Error, if we should now, for fear of Invasions from them, do what they formerly did for fear of Invasions from us, we might expect our Case would at last come to be the same; and then indeed they would have of us a full Revenge; but we would be much less excusable, because their Fears of Invasions from us were real, and were founded upon Experience, whereas our Fears from them are so far from being founded upon Experience, that they must always be imaginary and ridiculous.

At last the Question was put upon the Motion, and was, upon a Division, carried in the Negative, by 87 to 43.

The Motion was made by the E---l of St---d, and was supported by the L---d B---st, the E---l of A---d, the E---l of C---ld, the L---d C---t, and the E---l of W---ca: It was opposed by the L---d H---y, the L---d C---r, the E---l of F---ter, the D---ke of N---le, and the L---d H---ck.

#### RESOLUTIONS relating to the Poor.

On the 27th a Committee was appointed to consider the Laws in Being relating to the Maintenance and Settlement of the Poor, and to consider what further Provisions might be necessary for their better Relief and Employment: And the said Committee having considered and examined this Affair, came to several Resolutions, as follow, viz.

Resolved, That it was the Opinion of that Committee,

1. That the Laws in Being relating to the Maintenance of the Poor of this Kingdom are defective; and, notwithstanding they impose heavy Burthens on Parishes, yet the Poor, in most of them are ill taken Care of.

2. That the Laws relating to the Settlement of the Poor, and concerning Vagrants, are very difficult to be executed, and chargeable in their Execution; vexatious to the Poor, and of little Advantage to the Publick; and ineffectual to promote the good Ends for which they were intended.

3. That it is necessary, for the better Relief and Employment of the Poor, that a publick Workhouse or Workhouses, Hospital or Hospitals, House or Houses of Correction, be established in proper Places and under proper Regulations, in each County.

4. That in such Workhouse or Workhouses, all poor Persons, able to labour, be set to Work, who shall either be sent thither or come voluntarily for Employment.

5. That in such Hospital or Hospitals, Foundlings and other poor Children, not having Parents able to provide for them, be taken Care of; as also poor Persons that are impotent or infirm.

6. That

6. That in such House or Houses of Correction, all idle and disorderly Persons, Vagrants, and such other Criminals as shall be thought proper, be confin'd to hard Labour.

7. That towards the Charge of such Workhouses, Hospitals, and Houses of Correction, each Parish be assessed or rated, and that proper Persons be empowered to receive the Money so to be assessed or rated, when collected, and also all voluntary Contributions or Collections, either given or made for such Purposes.

8. That such Workhouses, Hospitals and Houses of Correction be under the Management of proper Persons, Regard being had to such as shall be Benefactors to so good a Work.

9. That such Persons as shall be appointed for the Management of such Workhouses, Hospitals, and Houses of Correction, be one Body politick in Law, capable to sue and be sued, and of taking and receiving charitable Contributions and Benefactions for the Use of the same.

10. That for the better understanding, and rendering more effectual the Laws relating to the Maintenance and Settlement of the Poor, it is very expedient that they be reduced into one Act of Parliament.

These Resolutions were reported to the House on the 2d Day of May, and on the 7th of the same Month were all agreed to without Amendment, except the 9th, which was amended thus, *viz.*

That such Persons as shall be appointed for the Management of such Workhouses, Hospitals and Houses of Correction, be one Body politick in Law, capable to sue and be sued, and of taking and receiving charitable Contributions and Benefactions in Money, for the Use of the same, with proper Restrictions as to the Use of such Bodies politick.

And then this Resolution so amended was agreed to by the House.

On March 28. Mr. Dundas presented to the House (according to Order) a Bill, for explaining and amending an Act past in the Parliament of Scotland, in the Year 1701, intituled, *An Act for preventing wrongous Imprisonment, and against undue Delays in Trials.* Which was read a first Time, and ordered to be read a second Time.

#### Scotch Petition against Patronages.

On April 10. a Petition of the then late general Assembly of the Church of Scotland was presented to the House and read; representing, That Patronages have, since the Reformation, been deemed by the said Church a very great Grievance, and not warranted by the Word of God, and have at all Times been struggled against; that soon after the Revolution, an Act of Parliament was made in Scotland,

abolishing the Power of Patrons to present Ministers to vacant Churches; and at the Union of the two Kingdoms, the Establishment of the Church of Scotland, in all its Rights and Privileges, by that and other Acts of Parliament made or ratified after the Revolution, was declared to be a fundamental and essential Condition and Article of that Union; and at that Time it was the Right and Privilege of the said Church to be free from Patronages; but that by an Act passed in the 10th Year of her late Majesty Queen Anne, intituled, *An Act to restore the Patrons to their antient Rights of presenting Ministers to the Churches, vacant in that Part of Great Britain called Scotland*, the aforesaid Act passed in the Reign of King William was rescinded, in so far as concerned the Power of Patrons to present Ministers to vacant Parishes, and other Advantages, which had been the chief Things bestowed on Patrons, in Lieu and Recompence of their former Right of Presentation, were never the less suffer'd to continue with them; and therefore praying the House to pass a Bill for repealing the foresaid Act of Parliament passed in the 10th Year of Queen Anne, in so far as concerns the Power of Patrons to present Ministers to vacant Churches, in order to restore the Church of Scotland to the Rights and Privileges she was possessed of at the Union of the two Kingdoms.

Leave was, in Pursuance of this Petition, moved for, and accordingly given to bring in a Bill for this Purpose, and Mr. Plumer, Mr. Erskine, Mr. Forbes, Mr. Arskine, Sir James Ferguson, and Mr. Hume Campbell, were ordered to prepare and bring in the same; which Bill was presented by Mr. Plumer on the 18th, but did not pass.

#### Speakers for and against the Place-Bill.

On April 22. the Bill for the better securing the Freedom of Parliaments, by limiting the Number of Officers in the House of Commons, was (according to Order) read a second Time; and a Motion was made for its being committed, upon which there ensued a long Debate; but as we have given the Substance of the Debate upon the same Bill in the former Session \*, it is needless to give the Substance of this new Debate.

The Speakers for committing the Bill were, J—n P—tt, Esq; Member for W—m in Dorsetshire, J—n B—ey, Esq; Member for S—dge in Hampshire, D—l B—ne, Esq; Member for L—l in Wiltshire, T—ms L—n, Esq; Member for O—d S—m in Wiltshire, A—r H—me C—ll, Esq; Member for B—ckshire, the L—d P—rtb, Member for B—ck, the M—r of the R—lls, S—l S—ms, Esq; Sir W—m

\* See London Magazine for August, 1734, p. 413, &c. and for Sept. 1734, p. 453, &c.



W—m, and Sir J—n H—d C—n: The Speakers against it were, G—ge F—x, Esq; Member for H—nn in W—tsire, S—n C—is, Esq; Member for E—e in Suffolk, T—s L—is, Esq; Member for P—tb in Hampshire, C—es W—ms H—y Member for M—tsire, R—t B—ng, Esq; Member for P—tb in D—nsire, P—ck L—y, Esq; Member for E—gb, J—es O—pe, Esq; Member for H—re in Surrey, J—pb D—rs, Esq; Member for T—fs in D—nsire, T—s C—t, Esq; Member for S—sb in C—ll, H—y P—m, Esq; Member for S—x, L—t G—l W—de, Member for B—tb in S—tsire, Sir R—t W—le, Mr. S—r G—l.

The Question being put for committing the Bill, it was, upon a Division, carried in the Negative, by 216 to 192.

**BILL for regulating Quarters, and DEBATE thereon.**

The Allotments for Quarters being laid before the House of Lords, pursuant to their Address for that Purpose, it was thereupon moved, and the Judges were ordered to prepare and bring in a Bill for regulating the quartering of Soldiers during the Time of Elections. This Bill was accordingly prepared by them and presented to the House, being intitled, *An Act for regulating the quartering of Soldiers, during the Time of Elections of Members to serve in Parliament*; and was as follows, viz.

**W**HEREAS, by the antient common Law of this Land, all Elections ought to be free: And whereas by an Act passed in the third Year of the Reign of K. Edward I. of famous Memory, it is commanded, upon great Forfeiture, that no Man by Force of Arms, nor by Malice or Menacing, shall disturb any to make free Election: And for as much as the Freedom of Elections of Members to serve in Parliament is of the utmost Consequence to the Preservation of the Rights and Liberties of this Kingdom: *To the End therefore that the same may be safely transmitted to Posterity, and for the Avoiding any Inconveniences that may arise thereunto from any Regiment, Troop, or Company, or any Number of Soldiers which shall be quartered or billeted within any City, Borough, Town or Place, where any Election of any Member or Members to serve in Parliament, or of the 16 Peers to represent the Peerage of Scotland in Parliament, or of any of them, shall be appointed to be made:*

Be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament, assembled, and by Authority of the same, that when and as often as any such Election shall be appointed to be made, the Secretary at War for the Time being (who is hereby required to take Notice

of the Time appointed for such Elections or Election) shall and is hereby required at some convenient Time before the Day appointed for such Election, to issue and send forth proper Orders in Writing for the Removal of every such Regiment, Troop or Company, or other Number of Soldiers, as shall be quartered or billeted in any such City, Borough, Town or Place where such Election shall be appointed to be made: *And every such Regiment, Troop or Company, or other Number of Soldiers as aforesaid, shall, upon the Receipt of such Order, accordingly march out of every such City, Borough, Town or Place, one Day at the least before the Day appointed for such Election, to the Distance of two or three Miles from such City, Borough, Town or Place, and shall not make any nearer Approach to such City, Borough, Town or Place as aforesaid, until one Day at the least after the Poll to be taken at such Election shall be ended, and the Poll Books closed.*

And be it further enacted, by the Authority aforesaid, That in case any Officer or Officers to whom such Order, from the Secretary at War for the Time being, (or other Person to whom the Issuing out such Order as is aforesaid shall belong) shall be directed and delivered, shall neglect or refuse to cause such Regiment, Troop or Company, or other Number of Soldiers so quartered or billeted as aforesaid, to march out of such City, Borough, Town or Place, at the Time and to the Place or Places in such Order specified, and shall be thereof duly convicted upon an Indictment, to be preferred at the next Assizes or Sessions of Oyer and Terminer, to be held for the County where such Offence shall be committed, or an Information to be exhibited in the Court of King's-Bench, within six Months after such Offence committed; which Information the said Court of King's-Bench is hereby empowered to grant, every such Officer shall, for every such Offence, be forthwith cashiered and displaced from such his Office, and shall be thereby disabled to have or hold any civil or military Office or Employment within this Kingdom, or in any of his Majesty's Dominions, and shall likewise forfeit

And if any Officer or Soldier, who shall be ordered or directed to march out, as aforesaid, shall be found in any such City, Borough, Town or Place, during the Continuance of such Election, as aforesaid, and shall be thereof duly convicted, upon an Indictment to be preferred at the next Assizes or Sessions of Oyer and Terminer to be held for the County where such Offence shall be committed, every such Officer shall, for every such Offence, forfeit the Sum of

Provided nevertheless, That nothing in this Act contained shall extend, or be construed to extend, to the Cities of London or Westminster, or the Borough of Southwark, for

and in respect of such Number of Troops and Soldiers only as are usually employed as Guards to his Majesty's Royal Person, or are usually quartered or billeted near to the Place of his Majesty's Residence, nor to any City, Borough, Town or Place, where his Majesty, or any of his Royal Family, shall happen to be or reside at the Time of any such Election, for or in respect of such Number of Troops or Soldiers only as shall be attendant as Guards to his Majesty, or to such other Person of his Majesty's Royal Family, as is aforesaid, nor to any Castle, Fort or fortified Place, where any Garrison is usually kept, for or in respect of such Number of Troops or Soldiers only whereof such Garrison is usually composed.

Provided likewise, That nothing in this Act contained shall extend or be construed to extend to any Officer or Soldier, who shall have a Right to vote at any such Election, as aforesaid, but that every such Officer and Soldier may freely, and without Interruption, attend and give his Vote at such Election, any Thing herein before contained to the contrary thereof notwithstanding.

On April 15. the House of Lords went into a Committee on the said Bill, and the first enacting Clause being read, the Earl of A—ea stood up and took Notice, That if none but the Secretary at War should be obliged to send Orders to the Soldiers to withdraw at the Time of an Election, the Intention of the Bill might be easily defeated; because if any future Minister should have a Design to over-awe any Election, or any Number of Elections, he might get the Secretary at War removed just before the Elections came on, and no new one appointed till after they were over; and as the Bill then stood, any other Person acting as Secretary at War, might refuse to issue such Orders, by which the Intention of the Bill would be defeated; therefore he would propose, that after these Words, *The Secretary at War for the Time being*, the following Words should be added, *viz. Or such other Person to whom it shall belong.* Which Amendment was agreed to without any Debate.

Then a Motion was made for leaving out the second enacting Clause, and consequently these Words in the first Clause, *viz. And every such Regiment, Troop or Company, or other Number of Soldiers, as aforesaid, shall upon the Receipt of such Orders accordingly march.*

This occasioned a strenuous Debate, in which the Argument for the Motion was in Substance as follows, *viz.*

My Lords, By a Bill which we have this Session passed into a Law, I mean the Bill against Mutiny and Desertion, and the Articles of War which are settled and signed by his Majesty in Consequence of that Bill, we know that every Officer is obliged, under ve-

ry high Penalties, to obey all such Orders as he shall receive from his Majesty's Secretary at War, or any Person acting as such: Therefore I must think it very unnecessary to lay the Officer under any new Obligation for giving Obedience to those Orders that are by this Bill to be sent him from the Secretary at War, with respect to his removing from any Place where an Election is to be. For this Reason, my Lords, I am of Opinion, that the second enacting Clause of this Bill, which is next to be read to your Lordships, ought to be entirely left out, and instead thereof a Clause inserted for laying Penalties upon the Secretary at War, or other Person acting as such, who shall refuse or neglect to issue Orders, as directed by this Act; and if your Lordships agree with me in this Opinion, you must of course leave out of the Clause now read to you these Words, to wit, *And every such Regiment, Troop or Company, or other Number of Soldiers, as aforesaid, shall upon the Receipt of such Orders accordingly march.*

If an Officer, my Lords, should disobey the Orders sent him upon any such Occasion by the Secretary at War, he might be tried by a Court-Martial, and subjected to the Punishment of Mutiny, which is a much more severe Punishment than any I believe your Lordships intend to inflict by this Bill; therefore it is very unnecessary, nay it would even seem a little ridiculous to make a new Law for inflicting a Punishment less severe than that which is inflicted by a Law we have already passed this very Session of Parliament; and it would be a great Hardship upon Officers to subject them to so many different Sorts of Trials for one and the same Crime: Besides, my Lords, the Regulation, as it stands at present in the Bill, might be attended with very great Inconveniences; for if every Officer were laid under an absolute Necessity, not only to remove out of the Town, but not to return to it upon any Account during the Time of an Election, it would be impossible for the civil Power to have the Assistance of the Troops in case any great Tumult or Riot should happen at an Election: Nay, the Enemies of the Government might take the Opportunity of an Election for a new Parliament to assemble and form themselves into great Bodies, at those Places where they knew the Troops could not come to disturb them, by which Means they might be enabled to begin a general Insurrection, and might come to a very great Head before his Majesty could make any Use of those Troops which are given him by Parliament for preserving the Tranquillity of the Kingdom: Even our Enemies abroad might take an Occasion to invade us, and to land their Troops at some of our Towns upon the Sea Coast during the Time of an Election, when, if this Bill as it now stands should pass into a Law, none of his

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Majesty's Troops could come within two Miles of the Place, to dispute or prevent their Landing.

These Considerations, my Lords, convince me, that no one of your Lordships will be for allowing this Clause to stand as it is in the Bill, without making some conditional Provision or Exception; and I cannot comprehend how any such can be made, without subjecting the Nation to greater Dangers than those we propose by this Bill to avoid; for if we make an Exception, that the Troops shall leave the Town, and shall not return, unless some great Danger happens, or is to be apprehended; we must give a Power to some Person or other to judge when that Condition exists, and where to lodge this Power does not to me seem easy to determine: To lodge such a discretionary Power in the Returning Officer, or in any other Magistrate of a little Borough, would certainly be of the most dangerous Consequence to the Freedom of Elections; and it would be as dangerous to lodge it by an express Law in the Breast of the Returning Officer. Thus, to make this Restraint absolute, may embroil the Nation in civil Wars, and to make it conditional may endanger the Freedom of our Elections; for which I must think it much better to lay the Officers under no Restraint or Obligation, but that which they are now under by the Martial Law, and the Mutiny Bill we have already passed: By them the Officers will always be obliged to obey the Orders they receive from the Secretary at War, unless some very sudden and unforeseen Accident makes it absolutely necessary for them to act otherwise; and in acting otherwise they will always be extremely cautious, because if they are not able to make the Necessity clearly appear, they will thereby subject themselves to the Laws against Mutiny.

I know, my Lords, it may be said, that as Trials by Courts Martial are very much under the Direction of the Crown, tho' an Officer should, on Occasion of an Election, disobey the Orders he had received from the Secretary at War, it would be in the Option of the Crown, or the Ministers of the Crown, whether or no he should be tried before a Court Martial for such Disobedience; and consequently that some Officers would be ready to disobey them, as often as they knew that the Orders were sent only in Obedience to the Law, but that it was not intended or expected they should obey them; but it is certain, that no Officer would venture to disobey such Orders without private Instructions in Writing, under the Hand of some superior Minister; and to suppose that any Minister would venture to give such Instructions under his Hand in Writing, or that many Officers would observe such private Instructions, are Suppositions which, in my Opinion, there is

not the least Ground to make; nay, I think it is almost impossible for us to make any such, if we consider, that if any Officer should behave in such an illegal Manner, or if any such private Instructions should ever be divulged, a Complaint would certainly be made in Parliament against such Officer or such Minister, and both might expect the highest Punishment the Parliament could inflict.

But, my Lords, suppose that an Officer could, in such Case, hope to evade all Punishment before a Court Martial or in Parliament, yet even as the Law stands at present, he could not hope to evade all Manner of Punishment; for if any Officer should remain in, or return to any Town during the Time of an Election, and should make Use of the Troops under his Command for over-awing the Election, he might be indicted even at Common Law upon the Statute of *Edward I.* called *Westminster the First*; by the 5th Chapter of which it is declared, That no Man shall by Force of Arms, by Malice, or by Menaces, disturb the Freedom of any Election, under the Pain of grievous Fine and Imprisonment; which is so severe a Punishment, that it is not to be supposed any Officer would subject himself to it at the Desire of any Minister, especially if such Officer were a Gentleman of Fortune and Figure in his Country, as most of our Officers are at present, and I hope always will be.

I hope, my Lords, I have now clearly shewn, that there is no Necessity for laying the Officers of the Army under any of the Restraints or Penalties proposed by this Bill, because they are already under as great Restraints and Penalties as can be supposed necessary for preventing their attempting to over-awe any Election, either by staying in, or returning to the Place where there is an Election, or by making Use of the Troops under their Command for disturbing the Freedom of Election; and as it must be granted, that the Restraints proposed by this Bill would expose us to great Dangers and Inconveniences, therefore I doubt not but your Lordships will agree to the Amendment I shall propose upon reading the next Clause, and for this Reason you must agree to leave out those Words which I have proposed to be left out of the Clause now before you.

It was answer'd to the Effect as follows, viz.

By the Amendment now offer'd, my Lords, the Intention of the present Bill, and indeed of all such Bills, seems to be very much misunderstood; for it is certain, that all Bills of the same Nature with that now before us, are designed as Limitations and Restrictions upon the Power of the Crown, or rather upon the Power of Ministers acting under

under the Crown. During his present Majesty's Reign we are certain, that no Incroachments will be made upon the Freedom of Elections by Means of the Army, or by any other Means; but this ought not to prevent our making such Regulations, as may appear necessary for preventing such Incroachments in any future Reign; and as it has always been supposed, that Troops quartered, or remaining in any Town, during the Time of an Election, might be some Sort of Incroachment upon the Freedom of that Election; therefore ever since we had any such Thing as a Standing Army in this Island, the Ministers of the Crown have thought themselves, in common Prudence, obliged to order the Troops to remove from every Town where there happened to be an Election, and not to return to that Town till the Election was quite over. This has hitherto been left to the Prudence and Discretion of the Ministers for the Time being, and the Reason of doing so was, that we have never yet been certain that a Standing Army would be kept up for any succeeding Year; but now that we have continued a numerous Standing Army for so many Years, and are like to continue it for Years to come, it was thought proper not to leave that to the Prudence of Ministers which might, in some future Reign, be made use of for the overturning of our Constitution; and therefore this House agreed to the Motion which was made, for ordering the Judges to bring in the Bill now before us: For this Reason, I must think, my Lords, that it was the Opinion of this House, that we ought, by an express Law, to put it out of the Power of any future Administration, to neglect doing that which all former Administrations have, in regard to our Constitution, thought themselves, in common Prudence, obliged to do.

This, my Lords, was certainly your Opinion when you agreed to the Order for bringing in this Bill; but from this Opinion we must now depart, or we must disagree with the noble Duke in the Amendment which he has been pleased to offer; for if your Lordships design by a new Law, to lay a Restriction or Limitation upon the Ministers of the Crown, the Execution of that Law is not surely to be intrusted with those upon whom that Restriction or Limitation is designed to be laid; which would be the Case if the Motion now made to us should be agreed to. 'Tis true, the Officers of the Army are, by the Mutiny Bill and the Articles of War, obliged to obey such Orders as they may from Time to Time receive from his Majesty's Secretary at War, and in case of Disobedience, they are subjected to very great Punishments; but for this Disobedience they are to be tried only by a Court Martial, and whether any such Court shall be appointed,

or whether any such Officer shall be tried before such Court when appointed, is entirely in the Power of the Crown, or more properly of the Ministers acting under the Crown, who are the very Persons whose Power was designed to be limited when this Bill was proposed. Can we then suppose, my Lords, that an Officer who disobeyed such Orders at the Desire of a chief Minister, would ever be brought before a Court Martial, or tried for such Disobedience? Your Lordships cannot surely suppose any such Thing; and therefore you cannot, in my Opinion, agree to the Amendment now proposed, unless you have departed from the Design you had when the Order for bringing in this Bill was agreed to.

But further, my Lords, let us consider who are the Judges upon every Court Martial; they are all Officers of the Army, Judges whose Commissions depend absolutely upon the Pleasure of the Crown; and shall we leave any Thing relating to the Freedom of Elections, upon which the Preservation of our Constitution so much depends, to be tried only before such Judges? The noble Duke has told us, that an Officer may, upon any sudden and unforeseen Emergency, disobey or act contrary to the Orders he receives from the Secretary at War; and is it not to be presumed, that a Court Martial, composed of such Judges, will admit of any Emergency as a sufficient Excuse for disobeying such Orders, when they know that such Disobedience proceeded from private Instructions given by a principal Minister of State? Surely we have not yet forgot what was one of the principal Grievances complained of before the Revolution, what was one of the first Things redressed by the Revolution: The general Complaint was, and it was a Complaint but too well grounded, that the Judges Commissions were all during Pleasure; and therefore they were too apt to follow the Directions they received from the Crown in any Affair, where the Ministers thought fit to give such Directions: Have not we then good Reason to be afraid that the Judges upon a Court Martial may, in future Times, do as other Judges during Pleasure have done in Times past? And shall we leave an Incroachment upon the Freedom of our Elections to be punished only by such Judges? Your Lordships did not certainly intend any such Thing, when you gave Orders for drawing up the Bill now before us, and therefore the learned Judges have very wisely drawn it up in such a Manner as to subject the Disobedience of an Officer, in the Case now before us, to a Trial at common Law, which is the only Method by which the Bill can be made effectual.

That the subjecting of an Officer to several Sorts of Trials for the same Crime, would be a Hardship upon the Officers of the Army, cannot, my Lords, be an Argument of any Weight,



Weight, when we consider that the Preservation of our Constitution is in the other Scale: It has, in many Cases, been thought necessary to subject the Gentlemen of the Army to be tried by the common Law as well as by a Court Martial: Even by the Mutiny Bill itself, if any Officer or Soldier shall take Quarters against Law, or shall disturb his Quarters, he is made liable to be tried by the Quarter Sessions, and if upon such Trial he be found guilty, if an Officer, he is to be immediately cashiered: And I hope your Lordships will think that an Officer's disturbing the Freedom of an Election, is an Affair of greater Consequence than that of disturbing his Quarters, and that therefore you will not think it a Hardship to subject him to a Trial at common Law in the one Case as well as the other.

As to the Dangers and Inconveniences to which it is pretended we may be exposed, by laying Officers under an absolute Necessity of removing from any Place where there is to be an Election, and not returning till that Election be over, they are founded, my Lords, upon Suppositions, I am sure much more unreasonable than that of supposing that some Minister may hereafter do what he ought not to do: For to suppose that any such Number of Men can meet at any Election, as may endanger the Government, to suppose that all those Men are such as will risk their Lives and their Fortunes by joining in an Insurrection, to suppose that they are all regularly armed and prepared for War, and to suppose that this Concert can be carried on without the Government's hearing a Word of it before the Day of Election, is carrying Suppositions, I must say, a great Length, and endeavouring to persuade us, to leave ourselves exposed to real Dangers, by frightening us with those which are altogether imaginary. Then with respect to Invasions; to suppose that an Invasion may be made, and the Troops landed just at the Time and at the very Place where an Election happens to be carrying on, we must first suppose, that an Express is gone over to let the Enemy know the Day appointed for the Election, that after their receiving this Account they embark their Troops, sail, and meet with such a favourable Wind as to bring them directly to the Place where the Election is on the very Day it begins, or within a few Days after, and to suppose that all this may be done in such a short Time as what usually intervenes between the appointing of the Day of Election, and that Day's coming on, is really carrying Suppositions a most extravagant Length. But, my Lords, if these were Suppositions that could be made, they would be of no Weight in the present Debate; for it is in all Cases a certain Maxim, that *Inter Arma silent Leges*: Upon any such Occasion the Troops not

only might, but ought to march into the Town where an Insurrection or Invasion happens, notwithstanding its being at the Time of an Election, notwithstanding the Law now proposed, and notwithstanding any Law that is or can be made: In Times of such Danger Men are always indemnified for what they may be oblig'd to do against the Letter of the Law, and a particular Act of Parliament for that Purpose, has always been passed as soon as the Danger was over.

As for any little Riots or Tumults that may happen at the Time of an Election, I cannot see, my Lords, why there is any more Danger to be apprehended from them now than there was formerly, when we had no such Thing as regular Troops, either to prevent their happening, or to quell them when they did happen. In former Times the civil Power was always found sufficient for preventing Riots, or for quelling them and punishing the Authors of them; and considering the severe Law against Riots, which was lately made and is still in Force, I am sure it cannot be said that the civil Power is now less sufficient for that Purpose than it was formerly. Besides, my Lords, we all know, that a Riot or Tumult at an Election makes it a void Election, therefore it is always the Business of those who have the strongest Party to endeavour to prevent all such, and indeed there is seldom or ever any great Riot happens, but what is occasioned by those who have a Mind to make the Election void, or by the Magistrates, who preside at the Election, doing some signal Injustice to the Electors; but supposing that there may happen now and then a few broken Heads or bloody Noses at an Election, are we, on that Account, to have all our Elections carried on under the Terror and Influence of a Regiment of Soldiers? Or are we to give them a Pretence to be present at all our Elections, or to give every little Magistrate, or perhaps a Custom-house Officer, a Power to call them in when he has a Mind?

Even the noble Lords who have spoke for the Amendment seem to think it dangerous to give by Law to any Returning Officer, or Magistrate of a little Borough, a Power to call in the Troops during the Time of an Election whenever he pleases; and they likewise seem to think it dangerous to give, by Law, a Power to the Officers themselves to remain in, or return to the Place where an Election happens to be, whenever they think it necessary; yet by the Amendment they propose, the Commanding Officer for the Time is to be vested with this very Power: The Secretary at War, indeed, is to be oblig'd to send his Orders for the Troops to remove, but as the noble Lords themselves have explained it, the Commanding Officer may disobey these Orders in case of any sudden and unforeseen Emergency, without running any Risk of being

ing tried or punished by a Court Martial for such Disobedience; and we may depend on it, that such Emergencies will never be wanting when a prime Minister has a Mind that the Troops should remain in, or return to the Place where an Election is carrying on: Nay, it will always be in the Power of any Returning Officer, or Magistrate of a little Borough, or of any Custom-house or Excise Officer, to furnish the Commanding Officer of the Troops with such an Emergency; for we know that the Troops have always a general Order to be assisting to the Civil Power, and likewise to all Officers of the Revenue; and therefore the Returning Officer may at all Times pretend that he is apprehensive of a Tumult, and may demand the Assistance of the Troops, or a Custom-house or Excise Officer may demand their Assistance in seizing or searching for smuggled Goods, and this will be a sudden and unforeseen Emergency, that will always excuse the Commanding Officer of the Troops for disobeying the Orders he receives from the Secretary at War, when any prime Minister but insinuates, that such Excuse should be admitted of by the Court Martial, in case the Officer should ever be brought to a Trial for any such Disobedience.

I am really surprized, my Lords, to find those who are so apprehensive of Insurrections and Invasions, and so very apt to suppose Dangers from thence arising, at the same Time shewing themselves so very little apprehensive of the Designs of future Ministers, and so unwilling to suppose, that the Constitution of this Kingdom and the Liberties of the People can ever be in any Danger from such Designs. I am sure, my Lords, there is nothing more natural than to suppose, that we may have in some future Reign an ambitious, rapacious, or wicked Minister, and as the Safety of such a Minister can consist in nothing so much as in destroying the Freedom of our Elections, we must necessarily suppose, that he will leave no Stone unturned for accomplishing that wicked Purpose; therefore we must likewise necessarily suppose, that he will send such private Instructions, as have been mentioned, to the Commanding Officers of the Troops, in all Places where he cannot influence the Election by any other illegal Means; and as such a Minister may probably have the sole Management of his Master, it is well known what Lengths some Officers may go rather than risk their Commissions by disobeying his private Commands, or in order to recommend themselves to his Favour for Preferment: Such an illegal Obedience to Ministerial Instructions is not, indeed, to be apprehended from the present Officers of our Army, but they are not immortal, and we do not, we cannot know by what sort of Men they may be succeeded; therefore I think it absolutely inconsistent with the Preservation of our Constitution to leave

those Officers, who may hereafter inchoach upon the Freedom of our Elections, to be tried only by those who may be guilty of the same Crime, and at the sole Pleasure of those whose Interest it may be, whose Safety may depend upon it, either not to try them at all, or to try them only in order to acquit them.

A A Prosecution in Parliament is not to be apprehended, my Lords, either by Officers or Ministers, when by such illegal Means they have got a Parliament to their own liking; and as to Officers being subject to a Trial at Common Law, upon the Statute of *Edward I.* I must observe, that if an Officer or any other should commit a Breach of the Peace, by openly endeavouring to over-awe an Election, or by openly intimidating any Returning Officer or Elector, he might be indicted, tried and punished at Common Law upon that Statute; but no Officer or Soldier can be indicted, tried and punished at Common Law, by Virtue of that or any other Statute, for not removing from the Place, or for returning to the Place where an Election is carrying on; and the Design of this Bill is, at least I always took the Design of it to be, to prevent the Officers or Soldiers being present in any Town or Place upon any such Occasion; for if they are allowed to be present, they may fall upon twenty Ways to influence, and even to over-awe the Election, without its being possible to prove any Overt Act against them, so as to indict them at Common Law upon the Statute of *Edward I.*

This was, my Lords, what made the Bill now before us necessary; the Design of the Motion was, and when your Lordships agreed to that Motion I must think your Design was, to make it criminal in any Officer or Soldier, to be present in any Place during the Time of an Election, unless he was there as an Elector; but if your Lordships agree to the Amendment now proposed, you alter the whole Intention of the Bill; you make it indeed criminal in the Secretary at War not to issue such Orders as are directed by the Bill, but you do not make it criminal in an Officer or Soldier to be present in any Place during the Time of an Election, at least you do not make it a legal Crime for which he may be tried at Common Law: Nay, in my Opinion, it will not be so criminal after the passing of this Bill as it was before; for before the bringing in of this Bill an Officer did not know but that he might be brought to a Trial at Common Law, if he remained in any Town, or returned to it during the Time of Election; whereas hereafter if he remains in the Town, if he brings his Regiment, Troop or Company to the very Place of Election, and plants Centuries to attend the Poll-books, he knows how he is to be tried, he is to be tried by his Brother Officers in a Court Martial, and I do not know but their Sentence



Sentence may be pleaded in Bar to any future Indictment brought against him upon the Statute of *Edw. 1.* for what Interpretations may hereafter be put upon this Law cannot now be so easily determined: And therefore I hope your Lordships will pass the Bill in the same Shape the learned Judges have brought in, unless some more convincing Reasons than any I have yet heard should be given for turning it into a Shape very different from that in which it is at present.

The Reply was in Substance as follows, viz.

My Lord: what was the Design of other Lords when they moved for, or agreed to the Order for bringing in this Bill, I shall not pretend to determine, but all I thought was intended, either by the Motion or Order was, to lay Ministers in Time to come under a legal Obligation of doing that which Ministers in Time past have always done without any Obligation, but what arose from the great Regard they have always shewn to the Freedom of our Elections. From this Regard Care has always hitherto been taken, when there was to be an Election at a Place where any Troops were quartered, to send Orders for the Troops to remove to some other Place during the Time of the Election; and all that I expected was to be done by the Law proposed was, to enact that such Orders should always be sent upon every such future Occasion. This was my only Design when I agreed to the Order for bringing in this Bill, and this Design would be fully accomplished by the Bill when amended as has been proposed. I never indeed once imagined that the Officers and Soldiers should be absolutely banished from any such Place during the Time of an Election; I could not imagine that it was to be made highly criminal in any Officer to appear as a private Gentleman in any such Place, in order to visit his Friends in the Town, or to drink a Glass with any Gentleman of his Acquaintance, who might perhaps come into Town upon that Occasion; and I must think, that the passing of such a Law would really be doing them a very great Injury, it would be treating them as Enemies, not as Subjects; whereas while our Army continues upon its present Footing, I think, both the Officers and Soldiers ought to be looked on, not only as Subjects, but as Subjects as much concerned as any other in the Preservation of our Constitution, and of the Freedom of our Elections.

I was likewise, my Lords, far from supposing, or ever designing, that it should by Law be put absolutely out of the Power of the Troops to remain in the Town, or to return to the Town where an Election happened to be, even in a Case of the utmost Necessity and Danger; for tho' I do not think

we need be at present under any very great Apprehensions of Insurrections or Invasions, yet I think we ought not to pass a Law which may tend directly to encourage them: It cannot, 'tis true, be supposed that any such great Number of Men can meet at any one Place of Election as may endanger the Government; but such a great Number may meet in a few Days at the Place of an Election, and may form themselves into such a regular Body, if they have but two or three Days Time for that Purpose, as to put it out of the Power of the Troops in that Neighbourhood to disperse them, nay as to oblige the Troops in that Neighbourhood to march off and leave them, by which Means two or three such Bodies of Men formed at different Places in the Time of a general Election, may be able to join together, and thereby form such Body as might endanger the Government: Then as to Invasions, the very Day of an Election at any of our Sea-port Towns, cannot indeed be known till after it is appointed; but after the Writs are issued for a new Parliament, the Days of Election may be nearly guessed at, and a foreign Enemy, by good Intelligence, might very easily take their Measures, so as to come to land at some of our Sea-port Towns on the very Day of Election; upon such an Emergency, the Officer would certainly be excused if he marched his Troops into Town, in order to attack them; but till they began to land he would not venture the Breach of such a severe Law, and after their having begun to land it would be too late for him to march from the Quarters assigned him during the Time of Election, which might probably be at 3 or 4 Miles Distance from that Town.

With respect to Tumults and Riots, my Lords, the Reason of the severe Law against them is very well known, and may be remembered by several of your Lordships: At that Time, even with the Assistance of the regular Troops, the Civil Power was seldom or ever able to quell the Riots and Tumults that happened, till after they had done much Mischief; and if the regular Troops were quite out of the Case, I am convinced we should at many Elections have such Tumults as could not be soon quelled by the Civil Power, tho' now armed with such a severe Law; for your Lordships must consider, that such Tumults or Riots are seldom made by those who have a Right to vote at any Election, and it often happens that those Candidates who have the Majority of the Mob upon their Side, have the Majority of legal Voters against them, at all which Places it is probable we should have dangerous and very mischievous Tumults, if the Mob were assured that the regular Troops could not be brought against them: They would very much despise the Proclamation against Riots, if they knew that

that there was no armed Force sufficient for putting the Law in Execution, after that Proclamation was read.

As it might be of the most dangerous Consequence, by an express Law, to lay an absolute and a peremptory Obligation upon the Troops, not to remain in or return to any Town during the Time of an Election, notwithstanding the greatest Necessity and Danger, so, my Lords, it might be of the most dangerous Consequence, by an express Law, to give a Power to the Troops to remain in or return to such a Town, whenever they thought there was any Necessity for their so doing; but I hope your Lordships will consider, that there is a very great Difference between a Power given by Act of Parliament, and that Power which arises from the immediate Necessity a Man is under: In the first Case the Prosecutor must shew, that the Person prosecuted exceeded the Power given him by Law, which in many Cases could not be so easily done; in the last the Person prosecuted will certainly be condemned, unless he can shew, to the Satisfaction of the Court, the Necessity he was under: Thus, by the Amendment now proposed, the Secretary at War is to be obliged to send his Orders to the Troops to remove, and by another Law passed this Session, the Troops are obliged, under very severe Penalties, to obey those Orders; nothing then can excuse their Disobedience but some very unforeseen and dangerous Emergency, and that Emergency must be made appear to the Court by the Officers who are guilty of such Disobedience.

I am as sensible, my Lords, and as much apprehensive of the Dangers to which we may be exposed by the Designs of wicked Ministers as any Lord in this House, and shall always be for using all proper Precautions against the Designs of such. For this Reason I agreed to the bringing in of this Bill, and as I am of Opinion that the Amendment now offered, will not derogate in the least from its Efficacy against such Designs, therefore I can make no Difficulty in agreeing to it; for by the Bill, when amended as proposed, it will be impossible for any Minister to incroach upon the Freedom of our Elections by means of the Army, unless we suppose all the Officers of our Army so abandoned as to sacrifice their Honour, their Conscience, and their Country, to the Favour of a Minister, which is a Supposition I am sure we have no Ground to make from past Experience: As the Officers of our Army must always be Subjects of *Great Britain*, we cannot suppose such a general Depravity of Manners among them, without supposing the same Depravity among all other Ranks of Men in this Kingdom, and against such a Depravity it is impossible to provide: Ministers will always have it in their Power to bestow Preferments

and Rewards upon Judges at Common Law, as well as upon Officers of the Army, and in case of such a general Depravity, we must suppose the former infected with it as well as the latter; in which Case the Freedom of our Elections would be no better secured by subjecting the Officers to a Trial at Common Law, than by subjecting them to a Trial before a Court Martial.

'Tis true, my Lords, it has always been thought improper to have regular Troops in any Place where an Election is carrying on, and in this general Opinion I readily join: I do think it is improper, but I cannot think it quite so dangerous as it has in this Debate been represented; for really I cannot well form to myself an Idea of any Practices that either Officer or Soldier could be guilty of for over-awing or incroaching upon the Freedom of an Election, without exposing themselves to an Indictment upon the Statute of *Edw. I.* I am sure if they threatened any Elector, or by Force prevented any Elector from coming to give his Vote, that Elector would be a good Evidence for the King; upon his single Oath a Bill of Indictment would probably be found by the Grand Jury, and I do not know but upon his single Evidence, if corroborated with any Circumstances, they might be found guilty upon the Trial; so that I am apt to believe it would be impossible for the Officers or Soldiers to make use of any such Practices as would be effectual for over-awing or giving a Turn to an Election, without exposing themselves to a certain Danger, not only of being prosecuted, but of being convicted at Common Law upon the Statute I have mentioned; and therefore, unless we suppose a Minister to have the Direction of our Courts of Law, as well as of our Courts Martial, I doubt much if he could prevail upon many Officers to join with him in over-awing or incroaching upon the Freedom of our Elections.

That the Bill now before us, or the Amendment proposed, should in the least derogate from the Statute of *Edw. I.* is what I cannot, my Lords, apprehend: If an Officer disobeys the Orders of the Secretary at War, and remains in, or returns to any Town during the Time of an Election, he is, for such Disobedience, to be tried by a Court Martial; but for any Incroachment upon the Freedom of an Election he is not surely to be tried by a Court Martial, and therefore no Trial by a Court Martial can ever be pleaded in Bar to an Indictment upon the Statute of *Ed. I.* By that Statute he may still be tried at Common Law; if he openly incroaches upon the Freedom of any Election, and by the Bill now before us, when amended as proposed, he may be tried by a Court Martial, and severely punished, if he keeps the Troops in the Town, or returns to the Town where



an Election is carrying on, without a very immediate Necessity for his so doing: By these two Methods I think the Freedom of our Elections will be sufficiently secured against all Inroachments from our Army, and therefore I shall be for agreeing to the Amendment proposed.

The Question being then put for agreeing to the Amendment, it was upon a Division carried in the Affirmative, by 70 to 35.

The Motion for the Amendment was made by the D<sup>uke</sup> of N<sup>orfolk</sup>, and supported by the E<sup>arl</sup> of C<sup>arbury</sup>, the E<sup>arl</sup> of W<sup>arwick</sup>, the L<sup>ord</sup> H<sup>erby</sup>, and the L<sup>ord</sup> Ch<sup>eshire</sup>: It was opposed by the E<sup>arl</sup> of A<sup>berdeen</sup>, the E<sup>arl</sup> of A<sup>berdeen</sup>, the E<sup>arl</sup> of A<sup>berdeen</sup>, the E<sup>arl</sup> of C<sup>arbury</sup>, the E<sup>arl</sup> of S<sup>utherland</sup>, the L<sup>ord</sup> O<sup>xford</sup>, the E<sup>arl</sup> of W<sup>arwick</sup>, the L<sup>ord</sup> B<sup>eaumont</sup>, and the L<sup>ord</sup> C<sup>arbury</sup>.

At last the Preamble of the said Bill was read (the Preamble being always the last Part of the Bill which is read in the Committee upon the Bill) and a Motion was made, that these Words, *viz.* 'To the End therefore that the same may be safely transmitted to Posterity, and for the avoiding any Inconveniencies that may arise thereunto from any Regiment, Troop or Company, or any Number of Soldiers, which shall be quartered or billeted within any City, Borough, Town or Place, where any Election of Member or Members to serve in Parliament, or of the 16 Peers to represent the Peerage of Scotland in Parliament, or of any of them, shall be appointed to be made,' should be left out; and that instead of them these Words, *viz.* 'That it hath been the constant Usage and Practice, to cause any Number of Soldiers quartered in any Place appointed for electing Members to serve in Parliament, to remove out of the same during the Time of Election,' should be substituted.

Upon this Motion there was another Debate, in which the Argument for the Motion was in Substance thus, *viz.*

My Lords, I have joined heartily with your Lordships in every Step that has been taken towards the bringing in and passing the Bill now before us, and shall be ready to join in every future Step that may be necessary for completing so good a Work; but, my Lords, there is one Consideration that has all along given me a good deal of Concern, and the present I take to be the proper Time for explaining myself to your Lordships, and for offering something to obviate the only Inconvenience that is to be apprehended from the Bill as it now stands. It is an Opinion, my Lords, that almost universally prevails without Doors, that no Bill of this Nature is ever brought into Parliament, much less passed into a Law, but for remedying some Griev-

ance that has been felt and complained of. 'Tis true, your Lordships may, and do often, from your Prudence and Foresight order Bills to be brought in, and pass Laws for preventing of Grievances in Time to come, tho' no such Grievance has before been felt or complained of; but those who are not acquainted with your Method of Proceeding in this Respect, and with the Motives which may have induced you to bring in or pass any such Bill, are always more apt to impute it to your Experience in Times past, than to your Precaution in Time to come: This Consideration has all along given me great Concern; I am afraid that evil-minded People may, from our passing of this Bill, take Occasion to throw unjust Reflections upon his Majesty's Government, as if some Use had lately been made of the Troops for over-awing or inroaching upon the Freedom of Elections; and as there is still a Party in the Kingdom disaffected to his Majesty and his Family, it is not to be doubted but that they will make use of this Handle for sowing Jealousies and Fears among his Majesty's best Subjects.

This Consideration, my Lords, weighty as it is, ought not to prevent our passing so good a Bill; but I think we ought to take all possible Precautions to prevent such a fatal Consequence; and this, I think, can only be done by leaving out some of Words in the Preamble, and inserting others in their stead, as I shall immediately propose. Your Lordships all know, that the bringing of this Bill was not occasioned by a Complaint against any Use that has lately been made of the regular Troops, your Lordships must be all sensible that his Majesty's Wisdom and Goodness is such, that he would by no Means permit any of his Troops to be made use of for over-awing or inroaching upon the Freedom of any Election; and therefore to satisfy the People, and to prevent his Majesty's Enemies from getting any Pretence for throwing Reproaches upon his Government, I hope your Lordships will agree to the Amendment in the Preamble, That these Words, To, &c. (as before-mentioned.)

The Answer was to this Effect, *viz.*

As I have, my Lords, as from an Attachment to his Majesty and the present happy Establishment as any Man in the Kingdom, I can never hear his Majesty's Name or his Government brought into any Debate without the utmost Concern; and it has of late become so customary to bring the sacred Name of the King into every Debate, that I wish there were some Order or some Regulation made for preventing the Practice in Time to come. Shall we never find Fault with any Measure taken by Ministers? Shall we never propose any Regulation for preserving our Liberties against any future wicked Ad-

ministration, but we must be told, it will reflect upon his Majesty and his Government? My Lords, we are upon all Occasions to distinguish between the King and his Ministers, between the King's Government and the Ministers Administration: His Majesty and his Government are so sacred, they can never be the Subject of any of our Debates, and therefore ought never to be mentioned; but the Ministers and their Administration may often deserve our most severe Animadversions: This Distinction, my Lords, is not only known in this House, but is known to all the People of the Kingdom; and therefore, whatever Surmises may be raised, whether just or unjust, they can never affect his Majesty or his Government, because if any Thing has actually been done which ought not to be done, every Man must suppose it was done without his Majesty's Knowledge, and will never meet with his Approbation.

With Regard to his Majesty then, my Lords, or his Government, your Lordships have no manner of Reason to be under any Concern about the Consequences of this Bill, or to alter or add any Words for preventing any Consequences it can be attended with. As to the Ministers Administration, indeed, I do not know but this Bill may occasion some Surmises that may affect them, and it is impossible to prevent such; for the very bringing in of this Bill will certainly give Ground to suppose that some irregular Use has lately been made of the Troops with respect to Elections. I shall agree with the noble Lords of the other Side of the Question in this, that it is the general Opinion that such Bills are seldom brought in but for Remedying some Grievance that has been felt; nay I'll go farther, I believe there is a great deal of Reason for such an Opinion; for it is very well known, that when any Bill is offered for preventing a Grievance, one of the most powerful Arguments made use of against it by a certain sort of Men, who always oppose such Bills, is, that such a Grievance was never yet complained of, therefore why should you apprehend it, or make any Provision against it? And this Argument is generally found to be of such Weight that People seldom venture to bring in or propose any Bill for preventing a Grievance till after it has been severely felt, and generally as well as loudly complained of. As this is generally the Case, I do not now see how it is possible to prevent such Surmises against the Administration, and what is now proposed to be inserted by the noble Duke will, I am afraid, add Credit to such Surmises; for the Words he proposes to insert will certainly be taken by the Generality of the People without Doors as inserted by the Ministers, by way of Vindication, and I remember an old Saying, which upon this Occasion I must beg Leave to repeat; *Nescio quid mali factum fuit Expurgatio.*

For this Reason, my Lords, the Words proposed to be inserted can, in my Opinion, no way contribute to the Vindication of the Ministry, and as they seem to imply a Compliment, not to his Majesty's Government but to the Minister's Administration, I think it below the Dignity of this House to pass any such Compliments, I think it inconsistent with the Honour of this House to pass such a Compliment when we do not know whether it be true or not; for as we have made no Enquiry, as not the least Proof has been laid before us, we cannot, as Members of this House, declare that it has been the Practice to cause the Soldiers quartered in any Place, appointed for electing Members to serve in Parliament, to remove out of the same during the Time of Election. Nay, I am sure we cannot with any Justice say it has been the constant Practice, because it has been lately affirmed in this House by Persons of great Authority, and not contradicted, that it has not been the constant Practice; and therefore I hope even the noble Duke himself will agree to leave the Word *constant* out of the Amendment he proposes.

But now, my Lords, I come to the Words proposed to be left out, and there indeed we have Reason to apprehend Surmises, Surmises of the most terrible Nature, because they will not only affect the Administration but the Honour of this House; when the People hear that a Bill was brought in by the learned Judges, for transmitting safely to our Posterity those Rights and Privileges we received from our Ancestors, by preventing the Influence of Officers and Soldiers in our Elections; and when they hear that we first struck out the Clause for subjecting Officers and Soldiers to a Trial at Common Law, and then struck out those sacred Words in the Preamble, will they not naturally surmise, that we struck that Clause out of the Bill, and those Words out of the Preamble, on Purpose that those Rights and Privileges, which we received from our Ancestors, might not be transmitted safely to our Posterity? Will it not be surmised, that the Necessity for such a Bill was so evident, that there was no withstanding the passing of some sort of Bill, but a Majority of this House had taken Care to leave out all those Words, and Clauses, which the learned Judges thought were necessary for making it effectual? These are Surmises, my Lords, we ought highly to regard; and considering the solemn Manner in which the Bill was brought in, considering the Character of those who prepared it, considering the Importance of the Affair it relates to, we have great Reason to apprehend that there will be such Surmises.

The inserting of these Words at the End of the Preamble, shews the Care and Concern the learned Judges have for the Preservation of our Constitution, and look something like the Invocations which, upon all such Occasions,



the ancient Heathens made use of towards their Gods; so that there really seems to be something sacred in them, and I cannot but look upon it as a sort of Devotion when I argue against turning such sacred Words out of the Preamble of this Bill: These Words are no way inconsistent with the Compliment proposed to be inserted, so that if your Lordships should agree to make this Compliment, you may nevertheless leave the other Words standing as they are: I cannot really form to myself the least Reason for expunging them, unless it be to suppose, that you are afraid of giving the People too high a Notion of their Rights and Privileges, and too warm an Affection for them, which is an Apprehension I am sure none of your Lordships can entertain; and therefore I hope the noble Duke will either drop his Motion wholly, or at least the first Part of it: But if he insists upon the Whole, it ought certainly to be separated, because some Lords may be for inserting the Words proposed to be inserted, and against leaving out the Words proposed to be left out; and other Lords may perhaps be of a quite contrary Opinion.

To this it was replied in Substance as follows, *viz.*

Whatever there may be, my Lords, in that Distinction between his Majesty's Government and the Administration of his Ministers, however well it may be understood in this House, I am afraid it is not so generally understood without Doors; and therefore I hope your Lordships will all agree with me in this, that it can be of no Service to his Majesty or to his Government, to raise groundless and false Surmises against the Administration of his Ministers: And as it cannot be said, as there cannot be the least Pretence for saying, that ever any Election was over-awed by the regular Troops, therefore I think it is absolutely necessary to insert in such a Bill as this some Words for preventing any such Surmise; and I must think that no Words can be invented more proper for that Purpose than those that have been proposed. There may perhaps have been one, or a very few late Instances where the Troops did not remove from the Place of Election as usual; but if that Affair were enquired into, it would, I believe, appear, there were very sufficient Reasons for their not removing; such Reasons as, I believe, would convince every Lord of this House, that it would be of the most dangerous Consequence to pass this Bill in the Shape in which it was brought in. However, to avoid any further Dispute in this Particular, your Lordships may leave the Word *constant* out of the Amendment that has been offered, and then I hope that Part of the Amendment will be unanimously agreed to; for to declare the Truth upon any Occasion, I can never take to be what is properly called a Compliment, nor

can I take such a Declaration to be below the Dignity of this House, especially when necessary for preventing unjust Surmises, which, it must at least be granted, could be of no great Service to his Majesty or his Government.

As to the Words proposed to be left out, I take it, my Lords, to be a general Rule, that no superfluous and unnecessary Words ought to be inserted in any Bill; for the shorter any Law is it is certainly the better, providing the Meaning and Intention of the Law be fully and clearly expressed; any superfluous and unnecessary Words, inserted either in the Preamble or in any of its Clauses, serve only to confound the true Meaning and Intention of the Law, and to raise Doubts and Difficulties when it comes afterwards to be applied to any particular Case that may occur. Of this Nature I take those Words to be which are now proposed to be left out; I look upon them as altogether unnecessary and superfluous; for the End and Intention of the Bill appears fully and clearly in every Clause of it, and therefore it is very unnecessary to declare in the Preamble for what End it was proposed or passed: This, my Lords, I take to be the true and the only Reason for moving to have those Words left out; and the Reason is so strong and so obvious that I think it impossible the leaving them out should occasion any unjust Reflections against the Administration, or against the Honour of this House; and as the Reason for inserting the other Words is as evident as the Reason for leaving these out, I think there is no Occasion for separating the two Parts of the Question, being convinced, that all those who are against any one Part of it will be against the Whole, as on the contrary, that all those who are for any one Part will be for the Whole as it now stands.

After this, it being agreed to leave the Word *constant* out of the Amendment, the Question was put upon the Amendment so amended, which upon a Division was carried in the Affirmative, by 64 to 28.

The Motion for this Amendment was made by the D—ke of N—le, and supported by the E—ls of Cb—ey and C—le. The Speakers against it were, the E—l of A—rd, the E—l of A—sa, the E—l of C—d, the L—d B—ß, and the L—d C—r.

Next Day the L—d D—r reported from the Committee of the whole House the Amendments made by them to the said Bill, and the same being read by the Clerk, the E—l of A—d moved for recommitting the Bill; upon which the Question was put, but upon a Division it was carried in the Negative, by 61 to 33.

Then the first Amendment being read a second Time, which was to leave out the latter Part of the Preamble, and to substitute Words instead thereof, reciting, That it hath been the Usage and Practice, to cause any Num-

Number of Soldiers, quartered in any Place appointed for electing Members to serve in Parliament, to remove out of the same during the Time of Election, as before-mentioned.

Which being objected to, after some new Debate, the Question was put, Whether to agree with the Committee in the said Amendments?

It was resolved in the Affirmative, *Content 61, Not Content 33.* Upon which a Protest was enter'd by several Lords, (which see in our *Magazine* for May, p. 248.)

The three next Amendments were read a second Time, and severally agreed to.

Then the fifth Amendment was read a second Time, being to leave out these Words, *viz.* And every such Regiment, Troop or Company, or other Number of Soldiers as aforesaid, shall, upon the Receipt of such Orders, march.

Proposed to agree with the Committee in the said Amendments.

Which being objected to, after Debate the Question was put upon the said Proposition, and it was resolved in the Affirmative.

The next Amendment was read a second Time, and agreed to.

Then the next Amendment was read a second Time, being to leave out the second enacting Clause, which was to inflict Penalties and Punishments on Officers and Soldiers, who should refuse or neglect to remove out of Places at the Time of Elections, and to substitute Words inflicting Punishments on the Secretary at War, in case he neglects to issue Orders for such Removal.

And it being proposed to agree with the Committee in the Amendment,

After some new Debate the Question was put thereupon,

And it was resolved in the Affirmative, *Content 64, Not Content 33.* Upon which several Lords enter'd their Protest, (which see also in our *Magazine* for May, p. 249.)

#### SPEECH on the Motion for passing the Salt-Bill.

On April 25. the Bill for granting and continuing the Duties upon Salt, and upon red and white Herrings, for a Term therein mentioned, was read a third Time in the House of Lords, and a Motion being made for passing the Bill, the Lord B——— stood up and spoke to this Effect, *viz.*

My Lords, Tho' the Arguments against this Duty, and against this destructive Method of raising Money, were so fully stated and explained when this Duty was last revived, \* that nothing new can be said upon the Subject; yet as there are now several

Lords in this House who were not here that Time, I must beg Leave to repeat one of the Arguments then made use of, and which is, I think, now stronger in several Respects than it was at that Time. Figures, my Lords, are stubborn Things, there is no twisting them into any Shape but that which is natural and right; and some Facts are so evident and so notoriously known that they cannot be denied or controverted. From these, my Lords, it must appear to every Man who understands the common Rules of Addition, that the Nation must in nine Years pay near 800,000*l.* for the 500,000*l.* which by this Bill is to be raised for the current Service of the present Year: For as the Sum of 500,000*l.* is to be immediately borrowed at an Interest of 4 per Cent. we must pay the Interest upon that whole Sum, or very near it, for nine Years, which is an additional Sum the Nation must at last pay, amounting to near 180,000*l.* Then, my Lords, the Expence of raising and collecting this Tax for four Years longer, must likewise be all paid by the Nation, and this will amount to at least 120,000*l.* more; for according to the lowest Computation, the Expence of collecting this Duty has always been reckoned at 25,000*l.* per Ann. for England, and 5000*l.* per Ann. for Scotland; this amounts to a yearly Sum of 30,000*l.* which in four Years amounts, as I have said, to the Sum of 120,000*l.* Thus, my Lords, from Figures and Facts it is plain, that for the 500,000*l.* now to be borrowed, the Nation must, in nine Years, pay 500,000*l.* for Principal, near 180,000*l.* for Interest, and 120,000*l.* for Charges in collecting, being in all very near 800,000*l.*

We have heard it, my Lords, strongly inculcated, both this Session and last, that upon the present Emergency we ought to endeavour to give foreign Powers great Ideas of the Wealth and the Strength of this Nation, and of our Readiness to engage in the War, in case we should at any Time hereafter find it necessary so to do. This, we have been told, would oblige them to set Bounds to their ambitious Views, and give Ear to those reasonable Terms of Peace which his Majesty was to propose: But when it is spread abroad, that now in a Time of Peace, in a Time of profound Tranquillity, we are borrowing Money at the Rate of 60 per Cent. for the current Service of the Year, will any Power on Earth imagine that we have any Wealth or Power left, or that we dare engage in an expensive and dangerous War? Surely, my Lords, we must admit, that there is some Sort of Parallel between the Circumstances of a Nation and those of a private Man; and and I submit it to your Lordships, if you would not look upon a Man in private Life as

\* See London Magazines for the Months of November, and December, 1732.



a Bankrupt, if he should attempt to borrow Money at a Premium of 60 per Cent. Therefore I must conclude, that the Powers now engaged in War will, from the very Case now before us, look upon this Nation as a Bankrupt, and will reckon us as fit for engaging in a heavy War, as a Bankrupt in private Life would be for commencing an expensive Law-suit: And whether such an Opinion can contribute towards obliging the Powers engaged in War to set Bounds to any of their ambitious Views, or to give Ear to the reasonable Terms of Peace, which his Majesty is to propose, I leave to your Lordships to judge?

To this no Answer was made, but the Question called for, which being accordingly put, was carried in the Affirmative without a Division.

DEBATE on the Sinking-Fund Bill.

Immediately after the Salt-Bill was passed, the Bill for enabling his Majesty to apply the Sum of one Million out of the Sinking Fund, for the Service of the Year 1735, was (according to Order) read a third Time, and a Motion made for its being passed; which being opposed, there ensued a long Debate, in which the Arguments against the Bill were to this Effect, *viz.*

I have often, my Lords, heard it made use of in this House, as an Argument for our agreeing to what was then before us, that it would strengthen his Majesty's Hands, and add to the Credit and Esteem of the Nation among Foreigners. This, my Lords, is an Argument that, when properly applied, will always have great Weight with me, and I think it never was, nor ever can be more properly applied, than against our agreeing to pass this Bill. Hitherto, or at least till within this Year or two, the Credit and the publick Faith of this Nation have always been in great Esteem among Foreigners, because they saw we had not only a Power to pay off honourably all the Debts we contracted during the last heavy War, but that we had the Wisdom and the Will to do so; and had actually set apart a considerable and a growing Fund for that honest Purpose: This our Friends observed with Pleasure, because from thence they took us to be in a flourishing Condition, and expected we would soon be free of all former Debts, and consequently would soon be in a Condition of giving them the same powerful Assistance we had given them in the last War, in case they should at any Time be unjustly attacked: This our Enemies looked on with Envy, with Dread, and with Awe, because they saw we were in a Condition to revenge any Insults they should offer, and to give a Check to their ambitious Projects: But the Bill we have just now passed,

and the Bill now before us will quite change the Scene: To see us in the Time of a profound Peace, not only continuing but mortgaging one of the heaviest and most dangerous Taxes under which our People groan; to see us laying violent Hands upon that sacred Fund which has been set apart for the Payment of our Debts, which stands actually mortgaged to the publick Creditors, will make the whole World believe that the Nation is reduced to the lowest Ebb: This will of course transfer the Pleasure from our Friends to our Enemies: The former may, perhaps, pity and bemoan, but the latter will most heartily despise and contemn.

My Lords, when the Sinking Fund first began to be nibbled at, I was afraid of the Consequence, and I foretold what has now come to pass. I foretold, that the next Step would be to apply the Whole to the current Service of the Year \*, and I am afraid there are some amongst us who already begin to think of making it a Building instead of a Sinking Fund; I am afraid there are some who have already form'd a Project of making it a Fund for contracting new Debts, instead of being a Fund for paying off the old; and this I am the more afraid of, because of the new Doctrine we have heard advanced in this House, That the publick Creditors have no Manner of Right in the Sinking Fund, That they have no Title or Right to demand any Thing of the Government but the regular Payment of their Interest. This, my Lords, was to me a Doctrine entirely new, a Doctrine which gave me the utmost Concern, because I looked on it as a Prelude towards the Mortgaging of that sacred Fund for bringing a new Debt upon this Nation; and the Application which is to be made of that Fund by the Bill now before us, I look on as a Paving of the Way for that pernicious Project; so that what I am this Day to say upon this Subject, I shall say by way of taking my Leave of that sacred Fund for ever, unless your Lordships Wisdom and Prudence, or some very unexpected Accident, gives me a most agreeable Disappointment.

But I hope your Lordships will now take this Doctrine into your Consideration, and will this Day dismiss it with that Contempt it deserves, in order to prevent the pernicious Consequences with which it is fraught. For my own Part, my Lords, I have always looked upon Bills, upon which any Sums of Money have been borrowed, as Contracts between the publick and the private Persons who lent their Money upon the Credit of such Bills; and when considered as such it is certain, all the Clauses and Conditions of them ought to be most religiously observed and most punctually fulfilled. In this Light let us con-

\* See Appendix to the London Magazine, 1733, Page 675. A.

sider the Sinking Fund: The Taxes from which that Fund arose were all at first mortgaged to the Creditors of the Publick, every Shilling arising from such Taxes were, by the expresse Words of the Bills by which those Taxes were first established, mortgaged for Payment of the Principal and Interest, or at least the Interest of what Money was lent upon them; the Laws by which those Mortgages were made are still subsisting, they stand as yet unrepealed, they cannot be repealed but by the Consent of those who lent their Money upon them, or by the Consent of those Persons who now stand in the Place of the first Lenders; and while these Laws stand unrepealed, while there is a Shilling due upon any of the Mortgages thereby established, it is a Breach of publick Faith to apply any Part of the Produce of those Taxes to another Use, without Consent of those who have now a Right to the Mortgage. I do not know, indeed, but in this Case the tacit Consent of the publick Creditors may be thought sufficient; but this is not the only Consideration; we ought to consider what is the Interest of the Nation in general, and every Man who considers the general Interest must conclude, that the sooner we pay off our publick Debts, the less they will cost us in the End, the less Interest we shall pay for them, and the sooner it will be in our Power to free the People from some of those Taxes under which they now so heavily groan.

I have already shewed, my Lords, what a Prejudice the Bill now before us may be to the Credit and Esteem of the Nation abroad; and as I look upon it as some Sort of Inroad upon that National Faith which is engaged to the Creditors of the Publick by so many Acts of Parliament, I must think it will do a great Injury to our publick Credit at Home, among all Men who seriously reflect and consider the Consequences of Things: These are fatal Consequences, but these, my Lords, are not the most fatal! The Diverting of this sacred Fund, and applying it to the current Service of this Year, is, in my Opinion, one of the greatest Injuries that can be done to his Majesty and his Family: To apply this Fund to current Services, in order to prevent the People's being sensible of any new Expence that has been brought upon them, and to enable Ministers to provide for that Expence which their Measures have made necessary, without laying any new Tax upon the People, may perhaps be a good temporary Expedient for an Administration; it may give a Minister an Opportunity to vaunt, that he has relieved the Land Interest, that he has charged them with but one or two Shillings in the Pound, and by this he may put off the evil Day for the Time of his Administration: But this, my Lords, is ruining his Master, it is an undermining of the Government: Administrations are fleeting

Things, Ministers are always changing, a mean temporary Expedient may do for a Minister who has no View beyond the Term of his own Administration; but his Majesty's Government is permanent; I hope it will endure in him and his Family for ever; and to make use of any little temporary Expedient, which may in the End greatly endanger or distress his Majesty's Government; or the Government of any of his Family, is a most imprudent Step; at present, my Lords, I shall call it by no worse a Name. The Bill now before us I must look on as such an Expedient; it is nothing but a temporary Expedient for concealing from the People the Expence which the Nation is to be put to for this ensuing Year: In a few Years the People, who are now eased by this Expedient, will all be gone, in a short Time few or none of them will be alive, to expresse their Gratitude for the Ease they now meet with; and as the Ease given to the present Generation will fall with double Weight upon Posterity; they must necessarily groan heavily under the Burden, they will have Reason to complain, they will have Reason to murmur, and most of them may, from that only Cause, become disaffected to his Majesty and his Family.

If we have any Respect, my Lords, if we have any Regard for the illustrious Family now upon the Throne, this Consideration ought to make us tremble; when we hear any such Expedient mentioned as that now before us: But there is still another Consideration which ought to have great Weight: If we have a Mind ever to be free of that Load of Debt the Nation at present labours under, particular Care ought to be taken to make a proper Application of the Sinking Fund during all Times of Peace; for if this Nation should happen to be engaged in a War, we cannot suppose that the Sinking Fund will amount to near so much as it does at present, I am indeed afraid it would, upon such an Emergency, almost entirely vanish; and this ought to be particularly taking Notice of by those who may now perhaps be forming Projects for raising new Debts upon the Credit of the Sinking Fund. The true Nature of this Fund is very little understood by those who imagine, that it has been all got from the Diminution of the Interest payable to the Creditors of the Publick. It is very well known, that by the Diminution of Interest in the Years 1717 and 1727, we got in the Whole but 697,000*l.* annual Income, and out of this Sum we ought to deduct the annual Sum of 100,000*l.* since added to the Civil List, we ought to deduct the Salt Duty, which has been lately taken from the Sinking Fund, and made a Fund for contracting a new Debt, and we ought to make many other Deductions I could name, all which added together amount to the yearly Sum of above 690,000*l.* so that properly speaking it is but



a most inconsiderable Part of the present Sinking Fund that can be said to arise from the Diminution of Interest payable to the Creditors of the Publick.

The real and the chief Foundation of our present Sinking Fund is to be looked for, my Lords, in a very different Article; the greatest Part of it arises from the Increase of our Taxes above what they produced in Time of War. The Produce of those Taxes, which were imposed for Payment of any Money raised during the War, was computed according to what they brought in yearly at that Time; but now in Time of Peace, every one of those Taxes produces a great deal more yearly than it did at that Time, and it is from this Increase that the greatest Part of our present Sinking Fund truly arises. This will appear evident from comparing the Produce of our Customs and Excise now in Time of Peace, with what they produced in Time of War. In ten Years of Peace, at least a Sort of Peace, from *Christmas* 1722, to *Christmas* 1732, the Customs produced, upon an annual Medium, 1,603,805*l.* whereas in the last ten Years of the War they produced, upon an annual Medium, but 1,260,732*l.* the Difference of which is 343,073*l.* yearly Produce more in Time of Peace than it was in Time of War; but there having been an Alteration made since the Year 1712, and before the Year 1722, in relation to the Drawbacks of the old Subsidy, and in relation to the Duties on Coffee, Tea, Chocolate and Brandies, which, since the Year 1712, and before the Year 1722, were taken from the Customs and turned into Excise, the Produce of both these Articles, which we may reckon at least at 200,000*l.* annually, ought to be added to the annual Produce of the Customs for the ten Years, from *Christmas* 1722, to *Christmas* 1732, or it ought to be deducted from the annual Produce of the Customs in the last ten Years of the War; in either of which Cases it will make the Difference between them 543,073*l.* yearly Increase in the Branch of our Customs only. Then, my Lords, with respect to the Excise, we shall find, that the Excise on Beer and low Wines (without including that on Coffee, Tea, Chocolate and Brandies) for three Years, from *Midsummer* 1729 to *Midsummer* 1732, at an annual Medium, amounted to 1,238,902*l.* and the same Excise in three Years of the War, from *Midsummer* 1709 to *Midsummer* 1712 (being the only three Years after the additional Third) was, at an annual Medium, but 897,662*l.* the Difference between which two Produces is 341,240*l.* yearly Produce more in Time of Peace than it was in Time of War; and these two yearly Increases amount to the Sum of 884,313*l.* which comes all in yearly to our Sinking Fund, by the Increase of our

Taxes now in Time of Peace, more than they produced in Time of War: 'Tis true it may be said, that the Duties upon Coffee, Tea, Chocolate and Brandies, have likewise greatly increased, and therefore the whole Sum of 200,000*l.* ought not to be deducted from 1,260,732*l.* let us then deduct a proportional Sum, which is 157,224*l.* the Produce of the Customs in Time of War will then appear to have been, at a Medium, 1,103,508*l.* but then the Increase of the Duties upon Coffee, Tea, Chocolate and Brandies, or the Difference between 200,000*l.* and 157,224*l.* which is 42,776*l.* must be added to the Produce of the Customs in Time of Peace, in which Case the Whole will amount to 1,646,581*l.* so that the Difference comes out to be the same.

I hope your Lordships will excuse me for making use of so many Calculations; for the Affair now before us is of such Importance, that it deserves the most serious, the most minute Consideration. Figures, my Lords, cannot err, and by them it evidently appears that near 900,000*l.* of our present Sinking Fund arises annually from the Increase of our Customs and Excises: Can we suppose that such an Increase would continue if this Nation should be involved in War? Are not we rather to suppose, that both would suddenly decrease, and would in a short Time come to the same, or very near the same Standard they were at during the last War? In such a Case, could we hope to discharge any great Part of our Debts yearly, by means of our Sinking Fund? Could we hope to contract new Debts, or to support a heavy and expensive War upon the Credit of such a Fund? Those who are just sinking and ready to perish, may catch hold of any Twig, may build their Hopes upon any Chimeras; but I hope this Nation is not yet reduced to such a Condition as to trust to a Twig, which must sink as soon as we catch hold of it, I hope we will never place our Security in any Thing but what has a solid and a lasting Foundation; and a solid and lasting Foundation we can find no where, but in the real Wealth and hearty Affections of our People: While the People are loaded with Debts they cannot be said to have real Wealth; while they are over-burdened with Taxes we cannot expect their hearty Affections; and as nothing can be so effectual for clearing them of their Debts, for relieving them from their Taxes, and for gaining their Affections, as a most religious Application of the Sinking Fund to the Uses for which it was originally intended, I must therefore be against the Misapplication proposed by the Bill now before us.

To this it was answered in Substance as follows, *viz.*

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My

My Lords, it is to me really surprizing to hear some noble Lords declaring the great Concern they have for the Credit of this Nation abroad, and at the same Time, with the same Breath, doing all they can to lessen the Credit and the Esteem of this Nation among Foreigners, by endeavouring to establish it as a Maxim, that even the Parliament cannot dispose of the Sinking Fund to any Use but that of paying off some Part of our Debts, contracted before the Year 1716; for if it were so, it is certain no foreign Power would have such a high Notion of the Power and the Strength of this Nation as they would naturally have, if they knew that we had a Million *sterling* coming in yearly, without laying any one Tax upon our People, which we might, as we thought fit, apply, either to the paying off of some of our old Debts, or towards raising Forces for our own Defence, or for assisting our Friends, or punishing our Enemies. I must therefore think that every Man, who has a true Regard for the Credit of this Nation among Foreigners, will, when he considers the Affair thoroughly, endeavour to establish the contrary Maxim; and I hope this House will, by passing the Bill now before us, endeavour to convince all Foreigners, that we have a Power, when we think it necessary, to apply the Revenue of the Sinking Fund towards their Assistance or Correction. When Foreigners consider what great Expence we have been at this Year in augmenting our Forces both by Sea and Land, and that notwithstanding such an Expence we have laid but two Shillings in the Pound upon our Land, I am sure it will give them a greater Opinion of the Wealth and the Power of this Nation, and will contribute much more towards our Credit among them, than the paying off a Million of our Debt could possibly have done: They will consider, that we may continue the same Forces as long as we have a Mind, without raising any new Taxes upon the People, and that whenever we find it necessary we may make very considerable Additions, by only increasing our Land Tax to what is usually paid in Time of War; and therefore we must conclude, that the Methods taken this Year for raising Money for the current Services, are the most prudent that could have been taken for establishing the Credit and Esteem of this Nation abroad; and that they are no way inconsistent with any Obligation we are under to the Creditors of the Publick, I shall endeavour to demonstrate.

Even supposing, my Lords, the publick Creditors had a Right to insist upon it, that the Sinking Fund should never be applied to any Thing but the paying off some Part of the Debt due to them, yet it has been admitted that their tacit Consent would be suffi-

cient for giving the Parliament a Power to apply it to other necessary Purposes; and as no Objection has been made by any of the publick Creditors to the Application now proposed, as every one of them is, I believe, glad to hear of its being so applied, therefore, from any supposed Right in them no Objection can be made to the Bill now before us; so that at present it seems to be an unnecessary Dispute, whether the Creditors have any Right in this Fund or no. However, as it may, in my Opinion, very much lessen our Credit abroad, as it might subject this Nation to very great Inconveniences, to suppose that even the Parliament could not dispose of the Sinking Fund to any other Purpose, if the Creditors should think fit to object to that Disposal, I hope your Lordships will give me Leave to state that Matter in the Light in which it appears to me.

If the publick Creditors, my Lords, have any Right to demand, that the Sinking Fund shall never be applied to any Use but to the paying off so much of their Principal yearly, that Right must arise either from the Reason and Spirit, or from the express Words of those Acts of Parliament by which the Sinking Fund was first created. With respect to the Reason and Spirit of those Acts of Parliament, it must be deduced from that Cause upon which they were principally founded; and it is well known that the Project, which gave Rise to those Acts of Parliament, did not proceed from any Terms offered by the Creditors: They never so much as thought of offering to give up a Part of their yearly Interest, in order to establish a Fund for paying off their Principal; but the Foundation of that beneficial Project, and the true Cause of those Acts of Parliament was this, the natural Interest of Money had decreased so much, and the Credit of our publick Securities had become so extensive, that some Gentlemen, who had the Good of their Country much at Heart, thought it was proper to take Advantage of the happy Circumstances the Nation was in at that Time, in order to lessen the Interest payable to the Creditors of the Publick; for this Purpose they founded the Inclinations of some of the leading Men in the monied Companies, and other rich Men in the Kingdom, to see if they would lend the Government any large Sum of Money at an Interest of 5 per Cent. and this was no sooner proposed than it was agreed to; by which it was found, that the Government could borrow at 5 per Cent. as much Money as would be sufficient to pay off all the Debts then redeemable by Parliament, which bore an Interest of 6 per Cent. or above: Thus the Project was soon brought to Maturity, and when the Proprietors of those Debts found they were like to be paid off, they chose rather to accept of a less Interest for their



their Money, than to take their Principal when they did not know where to place it out to any Advantage: They were so far from demanding any Conditions, they were so far from insisting that the Government should lay themselves under any Obligations, that they readily came in, and were glad of being allowed to accept of the Interest that was offered them; and why the Government should without being asked, without any Consideration, lay themselves under a peremptory Obligation, to apply the Savings made by that Reduction of Interest, to the paying off the Principal, is what I cannot comprehend, is what cannot, I think, be supposed.

Now, my Lords, with respect to the express Words of those Acts of Parliament, by which the Sinking Fund was established, let us examine the Acts themselves, to see if we can find in any one of them such Words as can possibly be understood to mean, that the Sinking Fund thereby established should, in all future Times, be inviolably applied to the paying off the publick Debts, without leaving it in the Power, even of the Parliament itself, ever to apply that Fund to any other Purpose. The Acts by which the Sinking Fund was first established, are, *The Act for redeeming the Duties and Revenues settled for paying off the four Lotteries, which is called the General Fund Act: The Act for redeeming several Funds of the Bank of England: And the Act for redeeming the yearly Fund of the South-Sea Company*; which three Acts were all passed in the third Year of his late Majesty; and in the Preamble of every one of them the Decrease of the common Interest for Money, is expressly assigned as the Cause for passing them, without the least Notice taken of any Covenant between the publick Creditors and the Government, about the future Application of the Sinking Fund then established, which would certainly have been recited if there had been any such Thing, or if any such Thing had been intended. The Preamble of the Act for redeeming the Bank Fund is very remarkable: — It recites, That the Governor and Company of the Bank of England, in regard that the common Rate of Interest for Money, is very much lessened under your Majesty's most auspicious Reign, are willing — and soon after are these remarkable Words — So as they may be satisfied the said last yearly Sum, till *Midsummer*, 1718, inclusively; and so as the future Payments of the said Sum of 88,751*l.* 17*s.* 10*d.* Farthing may be secured to them, from the said Feast-day till the Redemption thereof, and so as the said yearly Sum be made redeemable upon one Year's Notice: — Here, my Lords, is the Contract between the Government and the Bank fully recited, and not one Word mentioned of a Covenant between the two contracting Parties, about the

Application of the Sinking Fund: And in this Act, when the Surplus or Excess occasioned by the Reduction of Interest comes to be disposed of, it is expressly declared and enacted, — — — That the Excess or Surplus which at any Time shall or may be produced by the several Rates, Duties, Revenues and Incomes thereby appropriated, shall attend the Disposition of Parliament, and be applied according to Act or Acts of Parliament in that Behalf, and not otherwise. — By these Words, my Lords, this Excess or Surplus is so far from being appropriated to the paying off our Debts, that it is, in as express Terms as could be devised, left to the future Disposition of Parliament.

B The Preamble to the *South-Sea Act*, my Lords, is much to the same Purpose; the Words are — — — And whereas the said Governor and Company are contented, in regard the Rate of Interest is very much lessened, to accept, after *Midsummer* 1718, one Annuity of 500,000*l.* being after the Rate of 5*l.* per Cent. per Ann. for the said ten Millions.

C — — — Here your Lordships likewise see the Reason why that Company was contented to accept of 5*l.* per Cent. Interest: It was because the common Rate of Interest was very much lessened: This, my Lords, is the only Reason expressed, and if there had been any other Reason it would certainly have been expressed. In like manner, the Excess or Surplus of the S. S. Funds, are by this Act expressly declared to attend, from Time to Time, the Disposition of Parliament, and to be applied according to Act or Acts of Parliament in that Behalf, and not otherwise: From which Words it is to me as evident as Words can make it, that this Excess or Surplus was not then designed to be disposed of at any one Time, or to any one particular Use, but was to attend the Disposition of Parliament — From Time to Time. — So that I am sure neither the Bank nor the S. S. Company can pretend to have, from either of these two Acts, any Right or Property in the Produce of the Sinking Fund.

The only other Act by which the Sinking Fund was established is that I have mentioned, which is called the *General Fund Act*, and in the Preamble of this Act likewise, my Lords, the Cause or Consideration for passing the same is expressly mentioned to be, that the common Rate of Interest for Money had been very much lessened; after which the End and Intention of the Act is likewise mentioned in these Words, — — — Now, to the End a sufficient Fund may be established, for Payment of all the Annuities which shall be payable in Pursuance of this Act, it is enacted, — — — These Words I beg your Lordships would take particular Notice of, because if there had been any Intention to appropriate the Sinking Fund, thereby established, to the Payment of the

publick Debts, and to no other Use whatever, there would certainly in this Part of the Act have been added some Words to this Effect, ---- And likewise that a sufficient Fund may be established for Payment of the principal Sums for which those Annuities are to be payable, it is enacted, ---- From all which I think it is evident, that none of the publick Creditors, whose Interest was at that Time to be reduced, made any Contract with the Government, or desired to lay the Government under any Obligation for applying the Produce of the Sinking Fund to the Payment of the principal Sums due to them, and to no other Purpose whatever; and in that Case we must suppose that the Clause in this last Act, by which the Surplusses in the three Acts I have mentioned, are directed to be applied to the Discharge of the National Debts incurred before 1716, in such Manner and Form as should be directed and appointed by future Acts of Parliament, was never intended for any Thing else but as a Direction for the Commissioners of the Treasury, and other Officers of the Publick Revenue, how and by what Authority they were to dispose of the said Surplusses or Excesses: It was certainly never intended as an Implication of any Agreement or Contract with the publick Creditors, or as a Law which no future Parliament could repeal, alter or amend, without the Consent of the publick Creditors.

If then, my Lords, it cannot be supposed from any Thing that passed, or any Thing that was enacted in the Year 1716, that the publick Creditors whose Interest was then reduced, stipulated any Appropriation of the Sinking Fund to the Payment of the principal Money due to them, I am sure the Creditors concerned in the Irredeemables can much less be said to have made any such Stipulation; for it is certain they were no Way concerned in the Transactions of that Year; and as for the Transactions of the Year 1720, it can as little be said that they then stipulated any Thing from the Government, because that whole Transaction was carried on between the Government and the *South-Sea* Company, and that Company never desired any Thing more from the Government, but only a Liberty to increase their Capital Stock by redeeming, purchasing, or taking in the redeemable Debts and the irredeemable Annuities, providing that their Capital Stock might be increased according to the Terms and in the Proportions in the Preamble of that Act mentioned; and that they should have such an Annuity upon their Capital so increased as is therein stipulated, all which your Lordships may see in the Preamble of that Act; but in no Part of it, nor in any Part of the Act, is there the least Intimation of any Covenant or Contract between the Government and the Company, that the Surplusses

or Excesses to be thereby created were to be appropriated to the Payment of our publick Debts, and to no other Purpose. 'Tis true, the Commons here declare their being desirous to have the publick Debts and Incumbrances lessened as fast as may be, with regard to Justice and the publick Faith, and I believe every Man who wishes well to his Country desires the same; but the Company, who were then the only contracting Party with the Commons, are so far from making any Stipulation for that Purpose, that they do not so much as declare their being desirous it should be so: From all which, my Lords, I think it is evident, that none of the publick Creditors have either by the Intention and Spirit, or the express Words of the Laws by which the Sinking Fund was established or increased, any Right to demand that the Produce of the Sinking Fund shall be applied to the paying off their Principal: On the contrary, I think it is as evident as Words can make it, that the Application of that Fund is entirely left to the Disposition of Parliament: That it ought to be applied to the Discharge of the National Debt, contracted before 1716, is what no Man will doubt; but that the general Interest of the Nation may require, and that the Parliament may order its being otherwise applied, without the Consent, or even against the Inclination and Prayer of the publick Creditors, is what, I believe, will be as little doubted by any Man who considers its original Institution.

Another Argument, my Lords, has been made use of against this Bill, which I must confess I do not well comprehend: It has been said that it may be of dangerous Consequence to his Majesty and his Family: If I thought there were the least Ground for such an Argument, it would certainly be with me almost prevailing one: But when I consider the heavy Load that has for so many Years been laid upon the Landed Interest of this Kingdom, I must think there is nothing more just than to take all Methods for giving them Relief; and how an Act of publick Justice can be of dangerous Consequence to his present Majesty, or to any of his illustrious Family, I cannot comprehend. There was no other Way of raising the Money proposed to be raised by this Bill, but by laying four Shillings in the Pound instead of two upon Land; and in that Case I am sure the Landed Gentlemen would have complained, and would have had Reason to complain of our having loaded them with such a heavy Tax, when we had a Million in our Hand which we might have applied towards their Relief. The Nation would have been very little sensible of the Relief given them by paying off a Million of our Debt, but the Landed Interest would have been deeply sensible of so heavy a Tax, by which we must of course have raised a great



great many Enemies to his Majesty's Government, without procuring him any Friends: Whereas when Posterity reflect upon the Necessity we are now under, and the dangerous Situation we are in, they will readily excuse our not having cleared them of a Million of Debt at such a critical Conjunction.

I shall readily agree with the noble Lords, that a good Part of our Sinking Fund arises from the Produce of most of our Taxes having greatly increased since the last War; but that this Increase is entirely owing to the Peace we have enjoyed, is what I cannot, my Lords, admit; for I am convinced that it arises from the Increase of our People, the Increase of our Luxury, and the superior Care now taken in collecting our Taxes, and preventing all Manner of Smuggling. These I take to be the chief Causes of that Increase in the Produce of our Taxes, which has happened since the last War, and in this Opinion I am confirmed by this Observation, that the Increase has grown up gradually, whereas if it had been occasioned by nothing but the Peace we have enjoyed, it would have grown up all at once; the Increase would have been as great, or very near as great, the first Year after the Peace was established as it is at present; the contrary of which we know by Experience: Now, as neither of these Causes can be much affected by any War but a Civil War, which I hope this Nation will never be engaged in, therefore I hope, and I think I have good Reason to hope, that our Sinking Fund will be very near as large in Time of War as it is now in Time of Peace. I do not know that any Man ever formed a Project, or has so much as once had it in his Thoughts to mortgage the Sinking Fund, or to raise any new Debts upon that Credit; but, my Lords, if we were actually engaged in a War, I should think it a Maxim of the most dangerous Consequence to his Majesty and the Royal Family, to load and oppress the Subjects with new and heavy Taxes, rather than apply the Sinking Fund, yearly as it arises, to the Uses of the War, instead of applying it to the paying off the old Debts of the Nation; and for this Reason I cannot think it of any great Service to his Majesty or to his Family, to endeavour to establish it as a Doctrine, that the publick Creditors have an indefeasible Right in the Sinking Fund, and that the same cannot be applied by Parliament to any other Use without their Consent.

But, my Lords, if the publick Creditors had such an indefeasible Right in this Fund, it must then be granted, that it could not be applied by Parliament even to the reducing of those Taxes which are most prejudicial to the Trade, most burthensome on the Manufactures, and most oppressive upon the Poor of this Nation: And yet I have lately seen a Pamphlet hawked about in the Streets, under the Title of a Protest entered by some noble

Lords, upon this House's disagreeing with them in a Motion for our coming to a Resolution, that the Sinking Fund should always be applied to such Purposes, and to none other. How this can consist with the Doctrine now advanced, that this Fund cannot be applied to any Purpose but that of paying off the Debts of the Nation, contracted before the Year 1716, I must leave to other Lords to explain. However, they need not, I think, give themselves any great Trouble about getting over this Difficulty, for I have clearly shewn, that there is no Foundation for such a Doctrine. I have shewn that the Sinking Fund was at first intended to be left to the Disposition of Parliament; that it was chiefly designed for paying off the Debts of the Nation, but that the Parliament may apply it to other necessary Purposes, and I think there can be no Purpose more necessary than that of preventing our being under a Necessity of loading the Landed Interest with four Shillings in the Pound; therefore I must think the Bill now before us a most reasonable Bill, and I hope your Lordships will order it to pass.

The Reply to this was in Substance as follows, *viz.*

My Lords, I do not know what may be the Way of Thinking among some People in this Nation, but I am sure it is the general and the right Way of Thinking, to compute the Strength and Power of a Nation from that Revenue which it may apply towards a War, without running in Debt, or loading the People with heavier Taxes than they will patiently submit to pay. A Nation may, upon some extraordinary Emergency, be obliged to run itself something in Debt; but as every Mortgage upon a private Gentleman's Estate is a Step to the Ruin of his Family, so every publick Debt that is contracted is a Step to the Ruin of a Nation; therefore no Nation, unless they are mad, will contract any Debt, as long as they can raise what is necessary for the yearly Expence, by such Taxes as they think the People will patiently submit to pay; and the People of every Country will certainly submit patiently to pay any Tax that can be laid upon them, if they have a Confidence in their Governors, and an Assurance that they will demand no Money but what is necessary for the common Safety, and that the best and the most frugal Use will be made of the Money that shall be so raised. This, my Lords, I am sure, is the general Way of Thinking among all Foreigners, and who ever thinks in this Manner, will never admit that the Revenue which ought to be applied to the Payment of our Debts, is a Revenue which contributes to our Strength and Power. In the last War we made many, I believe some unnecessary Steps towards our Ruin; every Shilling of old Debt we pay off is at least

least a Step from our Ruin, and I with Grief and Sorrow reflect upon our having made so few during such a long Term of Peace and Tranquillity: But as all or most of our Debts bear an Interest of 4 *per Cent.* every Misapplication of the Sinking Fund is not only neglecting to make a Step from our Ruin, but is likewise making a new Step towards our Ruin, by bringing a new Debt upon the Nation, I mean the growing Interest for that Money which ought to have been paid off. By the very Bill now before us we bring a new Debt of 40,000*l.* upon the Nation: This Sum, 'tis true, in *English* Money, has but a small Sound, but in *French* Money it makes above 800,000 Livres, and what will a *Frenchman* think of this Nation when he hears, that now, in a Time of Peace, we have not only neglected to pay off a large Sum of old Debt, but have contracted a new Debt of near a Million of their Money? Will he not say, that we are either mad, or that the People are already so loaded with Taxes, or have so little Confidence in their Governors, that they will not patiently submit to pay any additional Tax? Can this, my Lords, add to the Credit or Esteem of the Nation among Foreigners? Can it contribute to render any of his Majesty's Measures effectual?

But this, my Lords, is not the only Step we have this Day made to our Ruin, we have made another most terrible Step, we have contracted another new Debt of above ten Millions of *French* Livres, which must confirm every Foreigner in his Opinion of the pitiful Circumstances we are reduced to. In order to save laying another Shilling upon Land, we have this Day made a second Mortgage upon the only Tax we had to mortgage, and therefore I am surprized to hear it so much as insinuated that we have, or that Foreigners will believe we have a Tax of 2*s.* in the Pound upon Land, which we may lay on when we please, and which we may apply towards increasing our Forces in Case of a War; for whoever considers what we have this Day done must necessarily conclude, that we have not at most above a Shilling in the Pound Land Tax, which we can apply towards increasing our Forces either by Sea or Land; and how short that Sum would be of the Expence necessary for supporting a War, every Foreigner, as well as every one of your Lordships, may easily judge.

The tacit Consent of the Money Companies may, perhaps, be some Sort of Excuse for what is proposed to be done by this Bill, but it is far from being an Authority absolutely sufficient; for such an Authority can only be obtained from the general Courts of the respective Companies: Such a tacit Consent as we have at present may flow from the Negligence, perhaps the Fraud of the Managers, which the Proprietors may afterwards find great Reason to complain of; and

when they begin to make such Complaints against their Managers, they will then certainly complain loudly against those who made a Handle of such a tacit Consent, in order to take away what properly and of Right belonged to them. Nay, my Lords, as all Companies and Corporations are something in the Case of Infants, even their express Consent could not justify the Application of the Sinking Fund to any other Purpose, unless there were really a Necessity for such Application; and I am convinced that no such Necessity can be pleaded at present; for, in my Opinion, we had no Occasion to be at any extraordinary Expence, no more than any other of our Neighbours not engaged in the War; and if there had been an apparent Necessity for any such Expence, our People would have agreed to raise it by some new or additional Tax, rather than to have had that sacred Fund diverted from the Uses for which it was originally intended.

I have read, my Lords, in a Pamphlet lately hawked about, some sophistical Arguments for proving, that the publick Creditors have no Right or Interest in that Fund, which every Man allows was principally intended for their Payment, and without which it is certain they never can be paid; but I little expected ever to have heard those Arguments repeated in this House: However, as they have been most minutely repeated in this Day's Debate, I hope your Lordships will excuse me for endeavouring to shew wherein their Fallacy consists; and in so doing I hope I shall be able to convince every Lord in this House, that the Creditors of the Publick have a Right in the Sinking Fund, not only from the Reason and Spirit but from the express Words of the Acts of Parliament by which it was established; and indeed the Words are so express that I am astonished to hear their Right controverted, especially in this House, where a most religious Regard for private Property has always been preserved.

My Lords, when a Motive founded upon private Interest, as well as a Motive founded upon publick Interest, can be assigned for any Project, I am always apt to imagine, that the Motive founded upon private Interest gave the first Rise to the Project, and was the principal Cause of its being carried into Execution: And, according to this Rule, if we examine the Project for establishing the Sinking Fund we must believe, that the first Rise of it proceeded not from any Gentleman who had only the Good of his Country much at Heart, but from some Gentleman who had the Good of his own Family as well as the Good of his Country much at Heart. Before the Year 1716 the Proprietors of the Redeemables had indeed an Interest of 6 *per Cent.* secured to them by Law, but as there was no Fund then settled for the Payment of their



their Principal, they could have no Expectation of ever being paid, or at least not till the Terms of the Irredeemables should be expired, and in such a long Time they did not know but that the Distresses of the Publick might put a Stop to the Payment of their Interest, as well as disappoint them entirely of their Principal. In this dangerous Situation no Man of common Prudence but would conclude, that it was better (at least for his Family) for him to have but 5 per Cent. Interest, and a certain Fund established for paying off the Principal in a short Term of Years; and from thence the Project for reducing the Interest, and thereby establishing a Sinking Fund, originally and principally proceeded: Ministers, or perhaps some of their Projectors, might have had a Project in their Heads for reducing Interest, but till it came into the Heads of some of the chief monied Men in the Kingdom, it was nothing but a Project, a meer Chimera; and for this Reason I am convinced, that the Project never came to any Perfection till the Managers of the Bank and S. S. Companies offered, not only to accept of an Interest of 5 per Cent. for what was due to their respective Companies, but to assist the Government with Money at the same Interest, for paying off the other Redeemables, who should refuse to accept of such an Interest: However, whether they made the Offer, or only agreed to the Proposition when made to them, is not material; but one or the other must have been the Case before that Project could be carried into Execution; and as we must suppose that the securing the Repayment of their Principal Money was the chief Thing they had in View, is it possible to suppose that they would make such an Offer, or agree to such a Proposition, without stipulating that the Sinking Fund, thereby to be established, should be appropriated to the paying off the Principal? It is impossible to make any such Supposition; and therefore their Right to the Application of this Fund arises in the most clear and evident Manner from the Reason and Spirit of the Transaction upon which those Laws were founded.

After this Contract and Agreement was made between the Government and the two Companies, and not till then, it began to be possible to carry the Project into Execution; and one of the first Steps taken was for the House of Commons to resolve, *That all Savings by the proposed Reduction of Interest, should go towards discharging and reducing the National Debt.* These, my Lords, are the express Words of the Resolution: They are absolute and unconditional, and from that very Moment every Man who had any Share, or afterwards purchased any Share in the Redeemables, must have believed, that by his accepting of 5 per Cent. instead of taking his

Money, he thereby acquired a Right to have the Savings applied to the Payment of the Principal, which Right he must have thought as absolute and unconditional as was the Resolution of the House of Commons upon which it was founded: And now to pretend, that there was no Contract or Agreement between the Government and the two Companies, or between the Government and any of the publick Creditors, because that Contract was not fully and particularly set forth in the Preambles of the several Acts of Parliament, is such a catching at Words, as I believe would hardly be made use of by a common Lawyer in *Westminster-hall*. It cannot so much as be pretended, that without the Assistance of the two great Companies the Government could then have borrowed, at 5 per Cent. as much Money as would have been sufficient for paying off all the Redeemables; and as they could have no other Motive from private Interest for agreeing to assist the Government, but only the Right they were to acquire to the Savings got by a general Reduction of Interest; therefore, tho' it had not been expressly stipulated, we must conclude it was implied in their Agreement, and if they had no other Right but by Implication, it would be doing them Injustice to rob them of such a Right.

I must beg Leave, my Lords, to touch a little upon the several Acts of Parliament by which this Right is, I think, clearly established. With Regard to the Preamble of the Bank Act, it is indeed recited in this Act as well as the others, that the common Rate of Interest for Money was very much lessened; but this was not the real Cause of either of the Acts; on the contrary I believe, that the common Rate of Interest being lessened, was chiefly owing to the Resolution upon which these Acts were founded; however it was necessary to make this a Pretence, not only to induce the Proprietors of the two Companies to approve of what their Managers had done, but to induce as many of the other Redeemables as it was possible, to accept of the 5 per Cent. Interest that was to be offered them; in this Preamble are likewise recited some Stipulations that related particularly to the Bank; but as this Act relates particularly to the Bank, the General Contract, the General Stipulation by which the publick Creditors were to acquire a Right, to have the Savings appropriated to the Payment of their Principal Sums, could not be recited, neither in the Preamble of this Act, nor in the Preamble of either of the other two, because the Bank was not to acquire a particular and separate Right to the Savings that were to arise by the Reduction of their Interest; nor was the S. S. Company to acquire a particular and separate Right to the Savings that were to arise by the Reduction of their Interest; nor were the other Redeemables to acquire any such Right

Right to the Savings by the Reduction of their Interest, but all of them were to acquire a general and joint Right in those Savings that were to arise by the Reduction of the Interest payable to them; and therefore it would have been improper, it would have been absurd to have recited this Agreement in any one of the Acts or indeed to have recited it all; the only Way of mentioning the Agreement was by performing it, and that was done by a general Clause in one of the Acts, as I shall immediately shew to your Lordships.

With respect to the Disposing Clause in the Bank Act, as well as the Disposing Clause in the S. S. Act, it is evident that both of them refer to some Act or Acts of Parliament that were to be made, for the Appropriation of those Surplusses or Excesses, in Pursuance of that Agreement which the Government had made with the Bank and S. S. Companies: When these two Acts were drawn up it was not determined, whether that Appropriation was to be made by one or more Acts of Parliament, or whether it was to be made by a particular Act for that Purpose, or by a Clause in some other Act; but it is plain, the Parliament then thought it might be done by one Act, otherwise it could not have been said, — according to Act or Acts of Parliament —; for if that Appropriation had not been designed to have been made by Parliament, but yearly as the Surplusses or Excesses arose, it must necessarily have required the passing of many Acts of Parliament for that Purpose; and in such Case the Words in this Clause must have been — According to Acts of Parliament in that Behalf — it would have been ridiculous to have said — Act or Acts — in relation to a Thing which could not possibly be executed by one Act: But the Truth is, it was at that Time resolved, to appropriate all those Surplusses or Excesses that should arise by all or either of these three Acts, to the Payment of Debts contracted before that Year; and it was resolved, that this Appropriation should be made by some Act or Acts to be passed in that very Session of Parliament; but that it should be left to future Parliaments to apply the Surplusses so appropriated, to the Payment of such of those Debts contracted before the Year 1716, as they should think proper: This was the only Power that was to be left to future Parliaments; and on account of this Power only the Words — From Time to Time — are inserted in the Disposing Clause of the S. S. Act.

As the Preamble of the General Fund Act relates only to the Creditors, whose Interest was by that Act to be reduced, therefore no Notice could be taken in the Preamble of that Act of the Appropriation intended, because that Appropriation was to be general, and to comprehend all the Surplusses arising by that and the other two Acts passed in the same Ses-

sion of Parliament; and from hence the noble Lord may find a very good Reason why no such Words as he was pleased to mention could be inserted in that Act: But, my Lords, before this Act was passed it was determined, that the Surplusses to arise by those three Acts might be properly and sufficiently enough appropriated to the Uses intended by the Agreement between the Government and the Bank and S. S. Companies, by a general Clause in this last Act, and therefore, immediately after such a Disposing Clause as is in each of the other two, there is inserted in this Act a general Disposing Clause, in such express peremptory Terms, that I must beg Leave to read the Whole to your Lordships. The Clause is in these Words. — *All the Monies to arise from Time to Time, as well of the Excess or Surplus, by Virtue of an Act made this Session for redeeming the Funds of the Bank of England, and of the Excess or Surplus by Virtue of an Act made likewise this Session, for redeeming the Funds of the S. S. Company, as also of the Excess or Surplus of the Duties and Revenues by this Act appropriated as aforesaid, and the overplus Monies of the said general yearly Fund, by this Act established, shall be appropriated to the discharging the Principal and Interest of such National Debts as were incurred before the 25th of December 1716, and are declared to be National Debts, and not provided for by Parliament, in such Manner as shall be directed by any future Act, and to or for no other Use whatsoever.* — This Clause, my Lords, is so explicit, and so express and particular, with respect to the Appropriation of the Surplusses arising from these three Acts, that I am really prodigiously astonished to hear it said in a serious Debate in this House, that the Proprietors of the Debts here mentioned have not, by this Act, as full a Right in these Surplusses as can possibly be given them by Act of Parliament. To pretend, that this Clause was designed only as a Direction to the Commissioners and Officers of the Treasury, is really most extraordinary. Does not every one of your Lordships see, must not every Man see, that the Words must then have run thus — *shall be applied in such Manner as shall be directed by any future Act, and to or for no other Purpose whatsoever*: Is it not evident, that if no immediate Appropriation had been intended, these Words — *appropriated to the discharging the Principal and Interest of such National Debts as were incurred before the 25th of December, 1716, and are declared to be National Debts, and not provided for by Parliament,* — must necessarily have been left out?

From what I have said, my Lords, it must, I think, demonstrably appear to your Lordships, that wherever the Project for establishing the Sinking Fund, by reducing the Interest payable to the Creditors of the Publick, took



its Rise, it was impossible for the Government to execute this Project without the Assistance, as well as the Agreement of the Bank and S. S. Companies: That besides the publick Advantage, which might perhaps be some Inducement to them, they had likewise their own private Advantage, because they thereby rendered the Payment of their Principal secure, which would have otherwise been extremely precarious: That as they had an Inducement from their own private Advantage, we must from the Nature of Things presume, that they made the securing them in the Enjoyment of this private Advantage, an express Condition in their Agreement, as well as in their Promise to assist the Government in the Execution of the Project; and this Clause which I have read to you we must therefore look upon as a Clause expressly stipulated by these two Companies, and which they then looked on as an absolute Security for the Enjoyment of that private Advantage they had in View: We must for this Reason confess, that these two Companies have a Right in the Sinking Fund, not only from their previous Contract, but from the very Words of this Clause; and if the other Redeemables had taken or called for their Money, these two Companies must have paid the Whole, consequently their Right in the Sinking Fund would then have extended to the full Value of all the Redeemables whose Interest was then reduced. Must we not then in Equity conclude, that those Redeemables who did not call for their Money, but accepted of an Interest of 5 per Cent. come in Place of the two Companies, and have a Right to enjoy the Benefit of their Contract? This, my Lords, I wonder to hear in the least controverted in this House, where so great a Regard has always been shewn to Equity, and to what appears to have been the Intention of Parties at the Time of contracting.

As for the Transaction between the Government and the S. S. Company in the Years 1719 and 20, from the whole Tenour of that Transaction it appears, that the Company, as well as the Government, supposed all along that the Sinking Fund, and Increase thereof, should remain appropriated to the paying off the publick Debts contracted before the Year 1716, and to that Use only; for could either the Company or the Government suppose, that any one of the Proprietors of the Redeemables would have subscribed his Debt into the S. S. Company, if he had been thereby to give up the Right he then had for being paid his Principal out of the Sinking Fund? Or could either of them suppose, that the Annuity would have subscribed their Annuities at any Price into the S. S. Company, if they had thought that they were thereby to accept of a much smaller Annuity, without any Security for their Principal; and indeed with-

out any tolerable Certainty for their Annuities being continued, so long as they were then by Law payable. Such Suppositions, either in the Company or in the Government, would have been ridiculous; and that neither of them made any such appears almost from every Clause in the Act. From the whole Tenour of the Act it appears, that the Meaning and Intention of both Parties was, that the Sinking Fund and the Increase thereof should remain appropriated to the Payment of the publick Debts contracted before the Year 1716, and that it should never be applied to any other Use; and upon this Assurance it certainly was, that the Redeemables as well as the Irredeemables subscribed so readily into the S. S. Fund. This was certainly the Design and the Intention of all the contracting Parties, both in the Year 1716 and in the Year 1720; and now to pretend that there was no such Contract, that the Creditors have no Right in the Sinking Fund, merely because this Contract is not recited in the Preambles of these Acts, in as full and ample a Manner as a Conveyancer would perhaps have recited it in a Deed between private Parties, is a Method of Reasoning I am sure not to be used in this House.

'Tis true, my Lords, after a certain Provision was made, not only for paying the yearly Interest to the publick Creditors, but likewise for paying off their Principal in a small Number of Years, in a Term that was within every Man's View, and in such a short Term, that it was not probable this Country would, in that Time, meet with any such Disaster as might interrupt the Payment either of Principal or Interest, it then began to be an Advantage to be among those Creditors who were the last to be paid off; and the S. S. Company, by a Clause in this last Act, wisely put themselves among the last who were to be discharged: But if the Doctrine now broached should prevail, if two or three more Misapplications, such as that now before us, should be made, this would soon cease to be an Advantage; the only Contest would be, who should be first paid off, because every Man would begin to be afraid that an entire Stop would be put to the Annuity as well as the Payment of the Principal, before the last Creditors could be paid off.

That the Landed Interest ought not to be loaded with any unnecessary Charge is what every Man will acknowledge; but our present Land-holders are all, I hope, Gentlemen of better Sense than to desire that their Posterity should be ruined, for the Sake of giving them a small present Relief; and I am persuaded there is not a Land-holder in England would either murmur or complain at his being loaded with four Shillings in the Pound, if he saw that it was absolutely necessary for the Preservation of his King and Country: But this, my Lords, is the Difference, and the true Cause

Cause of this new Doctrine, when any additional or new Tax is imposed, the People feel the Weight of the annual publick Expence; this puts them upon enquiring into the Necessity for that Expence, and when they can see no Necessity for it, they not only murmur, but those Murmurings become dangerous to the Ministers who subject the Nation to such an unnecessary Expence: Whereas no Man feels what is taken from the Sinking Fund, therefore no Man enquires into the Necessity of that Expence which occasions its being plundered; and for this Reason it will always be looked on by Ministers as a Fund which they may squander with Safety; but this may, and will, probably at last, fall heavy upon some Prince of his Majesty's Family: At the same Time that he sees almost all the Revenues in the Nation mortgaged for old Debts, he may find himself engaged in War, as expensive as was that War which occasioned those Debts; and this is so melancholy a Prospect, that the meer possibility of its existing must give the most affecting Sorrow to every Man who has the Security and Honour of the present Royal Family truly at Heart.

That the greatest Part of our present Sinking Fund is owing to the yearly Produce of our Taxes being much greater now than it was in Time of War is, my Lords, what cannot be controverted, and that that Increase is owing to the Peace we enjoy, is what can as little, I think, be controverted; for granting that the Increase of the yearly Produce of our Taxes is owing to the Increase of our People, to the Increase of our Luxury, and to the good Management and Exactness in collecting our Taxes, yet as these three depend upon the Peace, we now enjoy, therefore it must be granted, that the Increase of the yearly Produce of our Taxes depends also upon that Peace. If we were engaged in a foreign War, we would be obliged to send a great Army abroad, supposing we sent only 20,000 Men, we must allow that an Army of 20,000 effective Men would carry at least 30,000 of our People out of the Kingdom; and considering the many Taxes our People pay at present, we may reckon that every Man and Woman in the Kingdom, one with another, pays at least a Penny a Day towards the publick Expence; so that if by the War 30,000 of our People should be carried out of the Kingdom, by that one Article there would be a certain Decrease in the Produce of our Taxes, to the Amount of near 46,000 *l.* yearly; to which must be added the Decrease that would be occasioned by our sending out great Fleets yearly; for tho' our Ships of War be generally furnished with the necessary Provisions at home, yet none of the Seamen on Board consume so much of the Provisions of their own Country, or contribute so much to the Taxes, as they would do if they were living at home. With

respect to our Luxury, it is a Maxim which always holds true, that People are never so luxurious in Time of War as they are in Time of Peace; and as the Luxury of our People would decrease, we must therefore expect that the Produce of Taxes would decrease. But, my Lords, the greatest Decrease of all would be occasioned by its being impossible to collect our Customs so regularly, or to prevent Smuggling in Time of War so much as we do in Time of Peace: We would have our Coasts full of Privateers, and those Privateers would not only make it impossible for our Custom-house Sloops to guard our Coasts against Smugglers, but would often become Smugglers themselves; and when a great Profit is to be got, it would be impossible to prevent our People's dealing with them. These Considerations must shew to your Lordships, that our Sinking Fund would be but a very uncertain Foundation for supporting a heavy and expensive War.

With respect to our Power of altering, amending or repealing any Law, it is not at present, my Lords, the Question before us; but this House has always been extremely cautious of doing so, when such Alteration, Amendment or Repeal might probably hurt the Property of private Men; and the Bill now before us must certainly be looked on as a Repeal of all those Laws, by which the Sinking Fund has been appropriated to the paying off the Debts contracted before 1716, and tho' that Repeal may not immediately much injure the Property of the Creditors of the Publick, yet it is laying a Precedent by which their Property may at last be entirely annihilated; for the Necessities of State may at last be made an Argument for seizing, not only upon that Fund, which ought to be applied to paying their Principal, but upon those Funds which ought to be applied to the Payment of their Annuities; and if ever that happens they will not only feel, but will complain loudly of the Bill now before us. The Sinking Fund is as strongly and as firmly established for the Payment of their Principal, as the other Funds are for the Payment of their Annuities: In both Cases I can look upon the Parliament only as the Trustees of the People, and as such I must, indeed, doubt whether we have a Power to do what is proposed by the Bill. Let me suppose, my Lords, a Gentleman who has a great Mortgage upon his Estate, has settled 3000 *l.* a Year Rent Charge out of his Estate in Trustees, 2000 *l.* whereof to be applied by them yearly towards paying the Interest, and 1000 *l.* to be applied yearly towards paying off so much of the Principal Money due upon the Mortgage; suppose this Gentleman should afterwards grow a little extravagant, that he should apply to his Trustees, and tell them he had Occasion for that 1000 *l.* a Year, for the necessary Uses of his Family, and that as the Mortgagee did not want his Money they might let



let alone paying off any Part of the Principal for that Year, in order to supply those Necessities which his Extravagance had brought upon him: Now, my Lords, I should be glad to know whether the Trustees could comply with such a Request, or if they did, whether the Heirs of that Gentleman would be bound, by a Court of Equity, to approve of what the Trustees had done; I am apt to believe they would not; however, as I am no Lawyer, I shall not be positive, but would be glad the noble Lord upon the Wool-Sack would give the House his Opinion upon the Case.

The Objection, that if the publick Creditors had a Right in the Sinking Fund, it could not be applied towards reducing any of those Taxes which are most grievous upon the Poor, is an Objection that has already been made, and then received a full Answer, \* but as it is now again repeated, allow me, my Lords, to repeat the Answer. The publick Creditors have a Right to have the Sinking Fund applied yearly to the Discharge of some of those Debts which were contracted before the Year 1716; but the Parliament may apply it to the Payment of which of those Debts it pleases: As our Taxes are all mortgaged for the Payment of some one or other of those Debts, no Tax can be reduced till the Debt for which it is mortgaged be paid off; the Meaning of that Motion therefore was, that the Parliament should apply the Sinking Fund to the Payment of those Debts for which our most grievous Taxes are mortgaged, in order that the Tax might then be reduced; so that in that Motion there was nothing, my Lords, in the least inconsistent with that Right which the publick Creditors have in the Sinking Fund; which Right is, in my Opinion, as good a Right as the Right they have in those Funds which are appropriated for the Payment of their Annuities, and therefore I cannot but give my Negative to the Bill now before us.

The Question for passing the Bill being at last put, it was carried in the Affirmative, without a Division.

The Speakers in this Debate were, against the Bill, the L—d C——r, L—d B——st, and the E—l of A——d; And for the Bill, the L—d H——ry, the D—ke of N——le, F and the E—l of I——a.

DEBATE on the Scotch wrongous Imprisonment Bill.

The Bill for explaining and amending an Act passed in the Parliament of Scotland, in the Year 1701, intituled, *An Act for preventing wrongous Imprisonments, and against undue Delays in Trials*, (see p. 695.) was, after a long Debate for two Days, at last, upon a Division, passed in the H—se of C——ns

the 5th of May, by 139 to 131; and on the 9th of the same Month the said Bill was read a second Time in the H—se of L—ds, when a Motion was made by the E—l of S——d for having the said Act, passed in Scotland in the Year 1701, read to the House; whereupon the E—l of I——a stood up and spoke to this Effect, viz,

A My Lords, I shall readily join with the noble Lord in the Motion he has made for having the Act, to which this Bill refers, read to your Lordships: This I will the rather agree to, because it has of late been industriously reported, that the Liberty of the Subject in Scotland is no way secured: It has, I know, been confidently asserted, that the Subjects in that Part of the Island are still in a State of absolute Slavery; but when your Lordships have heard that Act read, you will see that there is no Manner of Ground for such Reports. Your Lordships will see that the Scots have not been idle, whenever they had an Opportunity for securing their Liberties, or for amending, explaining or enforcing that Part of their Law which relates to securing the Rights and Liberties of the Subject: Therefore I hope your Lordships will give all possible Attention to the reading of this Act; and as there are some Law Terms and Expressions in it which some of your Lordships may not perhaps so well understand, I shall beg Leave, after it is read, to give some short Explanation of them, from which I hope I shall be able to make it appear, that the Act stands no way in need of any Amendment or Explanation, and that the Bill now before us, instead of securing the Rights and Liberties of the Subject, will render them more uncertain and precarious than they were before.

E The Act was then read, and then his Lordship stood up again, and, after giving a short Explanation of the Scotch Law Terms, went on to this Effect.

Thus your Lordships may see, that no Man in Scotland can be taken up or imprisoned, unless an Information in Writing, and signed by the Informer, be first exhibited against him; and when any Person is to be sent to Prison, the Magistrate who commits him is by Law obliged to express in his Warrant of Commitment, the Crime he is charged with, or the Cause of his Imprisonment; and further the Jailor, or Keeper of the Prison to which he is committed, is obliged to deliver to the Prisoner a Copy of his Warrant of Commitment: Then, my Lords, with respect to Trials, if a Prisoner be not brought to his Trial within a certain Number of Days in the Act limited, he may apply to the proper Court, and upon such Application that Court is by Law obliged to bring him to an immediate

\* See Appendix to the London Magazine, 1733, Page 674, 675, 678.

Trial, or otherwise to discharge him. And, lastly, my Lords, with respect to Bail; if the Crime with which any Prisoner is charged be bailable, it is expressly ordered by the same Act, that the Judge or Magistrate before whom he is brought upon any such Charge, shall admit him to Bail, and shall not require Bail for any great or immoderate Sum; nay the Law goes further, it limits the Magistrate to a certain Sum for which he is to take Bail, according to the Rank and Quality of the Person accused; and the Sums so limited are by this Act so small, that even the Parliament of *Scotland* thought fit afterwards to increase them to double the Sums first appointed.

From these few Observations, your Lordships may see that the Liberty of the Subject in *Scotland* is as fully secured by this Act, as the Liberty of the Subject is in *England* by the *Habeas Corpus*; nay with respect to the Bail the Liberty of a Subject in *Scotland* is, in my Opinion, better secured, because the Sum for which a Man is to give Bail, is there limited and ascertained; whereas in *England* the Sum for which a Man is to give Bail is left intirely to the Discretion of the Judge or Magistrate who is to take the Bail. 'Tis true in *Scotland*, an Information upon Oath is not required; but that proceeds from the whole Spirit and Tenor of their Laws, by which an Oath is deemed so sacred, that it is not presumed that any real honest Man will voluntarily subject himself to it, and whoever does so, is called an *ultraneous Witness*, which is in that Country always deemed a good Reason for suspecting his Evidence; and in all criminal Matters, the Lawyers and Judges of *Scotland* have always been of Opinion, that no Witness ought to be examined upon Oath against any Man, but in a publick Court, and in the Presence of the Prisoner, when he and his Counsel have an Opportunity, and have always full Liberty to cross-examine the Witness, and to make him explain fully every Thing he says.

His Lordship then spoke to the several Clauses of the Bill, and endeavoured to shew the bad Consequences with which they would be attended, and then concluded with his being against committing the Bill, for the Reasons he had offered; and because that if there was any Cause for altering the Law of *Scotland*, he thought such a great Alteration as was proposed by that Bill, ought not to be made, but after the most full and mature Consideration, which he thought they could not have Time for, so near the End of a Session of Parliament.

To this the L<sup>d</sup> C——— answered in Substance as follows, viz.

My Lords, as I cannot pretend to any Knowledge in the Law of *Scotland*, much

less to such a thorough Knowledge of that Law as the noble Lord who spoke last, I am at some Loss when I rise up to speak to the Bill now before us. I will grant, my Lords, that the *Scots* have provided as well for their Rights and Liberties as they could, and that they have formerly endeavoured to prevent all the Dangers and Encroachments which could then be foreseen; but it is impossible, it would be vain in any Man, or in any Set of Men, to pretend to guard against all the Dangers that may hereafter arise. The Facts or Events which gave Occasion for bringing this Bill into the other House are not, 'tis true, before us; but it is certain, and I have even heard, that some Things have happened lately in that Country which shew, that all the Incroachments that may be made upon the Liberty of the Subject, are not sufficiently guarded against by the Act of the *Scotch* Parliament which has been now read to you: These late Occurrences, we may suppose, gave Rise to this Bill in the other House; and as there are a great many Gentlemen in that House who thoroughly understand the Law of *Scotland*, we must suppose that they made it fully appear to the House that some such Bill was necessary, before the Bill could pass in that House.

This, my Lords, is a general Reason at least for our not rejecting this Bill; but from the Objections the noble Lord has been pleased to make to it, I plainly see there is a Necessity for passing some such Bill. It is, I think, most unreasonable that any Man should be deprived of his Liberty, and subjected to the Danger and Expence of a Trial, perhaps for his Life and Fortune, upon a vague and general Information, not sworn to, but only signed by the Informer; which he may perhaps have given out of Malice, or in a Passion. I shall always think that some Sort of Evidence is necessary before a Subject be imprisoned, or so much as prosecuted for any Crime; and I am sure the least Evidence that can in such a Case be required, is the Oath of one Witness. Another particular Reason for evincing the Necessity of some such Bill is, that I find it is neither the Law nor the Custom in *Scotland*, to examine the Person accused before he is committed to Prison; yet this I must think ought always to be done, because, by such Examination, the Magistrate who grants his Warrant may find, that the Information upon which he granted the Warrant was false and malicious. This, my Lords, I am convinced of from Experience; for when I had the Honour to be in a Place of high Trust under the Crown, there was a Fellow came to me and gave me an Information upon Oath, of no less a Crime than High Treason, against some Persons in *Wapping*, which Information was so clear and distinct, and the Facts so probable, that I had not the least Reason



to doubt of it; however, as it was my Duty, I ordered the Persons accused to be brought directly before me, and, upon examining them, I very soon found that it was a false and a villainous Information, given by a Fellow who had run deeply in their Debt, and had taken that Way to get free of what he owed them; whereupon I dismissed the Persons accused, and had the Informer immediately secured: Of this Story I acquainted his late Majesty, who was so good as to order the Attorney General to prosecute the Fellow for Perjury, of which he was accordingly convicted, and for which he suffered severely.

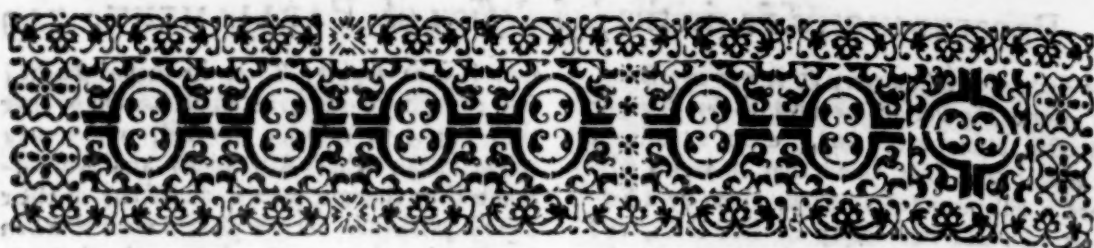
His Lordship then proceeded to examine the Objections made to the several Clauses of the Bill, most of which he endeavoured not only to answer, but to shew, that from each of them there arose a strong Argument for the Necessity of passing some such Bill. Some of the Objections however he admitted, but shewed, that they might be very easily removed by Amendments, which might and certainly would be made in the Committee; and con-

cluded with saying, That he hoped he had said enough to persuade their Lordships that they ought to commit the Bill, where they might make what Alterations and Amendments they thought proper, and if any of their Lordships should not be pleased with it when so altered and amended, they might throw it out upon the third Reading; but this was not complied with; for the Question being put, Whether the Bill should be committed, it was resolv'd in the Negative, *Contents* 28, *Not Contents* 68. Whereupon a Protest was enter'd, (which see in our *Magazine* for May, p. 250.) The Question having been thus carried against committing the Bill, it was therefore of Course rejected.

On May 15. the King came to the House of Peers, and the Commons being sent for, his Majesty gave the Royal Assent to the several Bills mention'd in our *Magazine* for May, p. 276. And then prorogu'd the Parliament, after having made a most gracious Speech to both Houses; which we have inserted in our said *Magazine* for May, p. 277.



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